1056.

SUPREME COURT OF THE UNITED STATES.

No. 78.

LESSEE OF PHILIP HICKEY ET AL., PL'FF IN ERROR,

vs.

JAMES A. STEWART ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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J. & G. S. Gideon, printers.

DOE, on demise of HICKEY,
vs.
JAMES A. STEWART et al.

Pleas before the honorable Samuel J. Gholson, district judge of the United States, at a circuit court of the United States held at Jackson, in and for the ninth circuit and southern district of Mississippi, at the November term thereof, in the year of our Lord one thousand eight hundred and forty-one.

Be it remembered that heretofore, to wit, at a circuit court of the United States held at the town of Jackson, in and for the ninth circuit and district of Mississippi, at the November term thereof, in the year of our Lord one thousand eight hundred and thirty-eight, came John Doe, on the demise of Hickey et al., by Howell and Johnston, their attorneys, and brought into the said court their certain bill of a plea of trespass and ejectment against Richard Roe, with notice to James A. Stewart et al.; which said declaration, notice thereon written, and marshal's return, is in the words and figures following, to wit:

Richard Roe was attached to answer John Doe of a plea, wherefore the said Richard, with force and arms, entered into the messuage and lands, improved and unimproved, containing two thousand acres or thereabouts, exceeding the value of two thousand dollars, with the appurtenances, lying on the waters of bayou Sarah creek, in the county of Wilkinson, State and district of Mississippi; which said two thousand acres of land, and the improvements thereon, Philip Hickey, Anna Hickey wife of said Philip, William Wikoff, senior, Elizabeth his wife, and Francis T. Duncan, heirs of James Mather, deceased, who are citizens of the State of Louisiana, had jointly and severally demised unto John Doe, for a term which is not yet expired, and ejected him from his said farm, and other wrongs to the said John Doe then and there did; and therefore the said John Doe, by his attorneys, complains, that whereas heretofore, viz: on the first day of November, A. D. eighteen hundred and thirty, at the circuit and district aforesaid, Philip Hickey, Anna Hickey his wife, William Wykoff, senior, Elizabeth his wife, and Francis T. Duncan, heirs of James Mather, deceased, citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, State and district of Mississippi, on the waters of bayou Sarah creek, about six miles from Woodville in a southeast direction, on both sides of the road leading from Woodville to Pinckneyville, as described in the deed from James Mather to George Mather, dated April, 1803, and filed and recorded on 13th November, 1815, viz: in the circuit and district aforesaid:

To have and to hold the same unto the said John Doe and his assigns, from the said first day of November in the year aforesaid, for and during the term of twenty years then next ensuing, and fully to be complete and ended; and also for that, whereas heretofore, viz: on the first day of November, anno domini eighteen hundred and thirty, at the district aforesaid, Philip Hickey, and Anna his wife, William Wykoff, senior, and Elizabeth his wife, and Francis T. Duncan, the said Anna, Elizabeth, and Francis being legal heirs of George Mather, deceased, all of whom are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, of a value exceeding two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, State of Mississippi, district aforesaid; to have and to hold the same to the said John Doe and his assigns, from the first day of November, in the year eighteen hundred and thirty, for and during the term of twenty years then next ensuing, fully to be complete and ended. And also for that, whereas heretofore, viz: on the first day of November, eighteen hundred and thirty-seven, at the district aforesaid, George J. Mather, A. M. Tureaud, and Aurora his wife, who was Aurora Mather, Alexander Mather, Charles Mather, and Louisa Mather, the said George, Aurora, James, Alexander, Charles, George, and Louisa, heirs of George Mather, junior, deceased, all of whom are citizens of the State of Louisiana, had jointly and severally demised to the said John Doe two thousand acres of land, exceeding the value of two thousand dollars, together with the appurtenances, lying and being in the county of Wilkinson, district and State aforesaid; to have and to hold the same unto the said John Doe and his assigns from the said first day of November, eighteen hundred and thirty-seven, for and during the term of twenty years next ensuing, and fully to be complete and ended. By virtue of which said several demises the said John Doe entered into the said messuage, and two thousand acres of land of the value aforesaid, with the appurtenances, and became and was thereof possessed, for the said terms so to him thereof granted as aforesaid; and the said John Doe being so thereof possessed, the said Richard Roe afterwards, to wit, on the second day of November in the year aforesaid, with force and arms entered into the said messuage and the said two thousand acres of land, with the appurtenances, lying and being as aforesaid, in which the said John Doe was interested in the manner and for the terms aforesaid, which are not yet expired, and ejected the said John Doe from his said terms and farms then demised as aforesaid, and other wrongs to the said John Doe then and there did, to the great damage of the said John Doe, and against the peace and dignity of the United States.

Wherefore the said Doe saith that he is injured, and hath sustained damage to the value of one thousand dollars, and therefore he brings suit.

HOWELL & JOHNSTON, *for plaintiff.*

To Messrs. James A. Stewart, Thomas H. Prosser, John W. Leatherman, and Robert Morris, citizens of the State of Mississippi.

I am informed that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and being sued in this action as casual ejector only, and having no claim or title to the same, do advise you to appear at the ensuing term of the circuit court for the ninth circuit, Mississippi district, to be holden in the town of Jackson, Mississippi, in May next, by some attorney of said court, and then and there, by rule of said court, to cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment therein to be entered against me by default, and you will be turned out of possession.

Dated this 29th December, eighteen hundred and thirty-seven.

Yours, &c.

RICHARD ROE.

Marshal's return.

Benjamin F. Hubbard is hereby specially deputized to execute the within process, and make return of the same.

Given under my hand and seal, this 17th January, 1838.

WM. M. GWIN, [L. S.]

Marshal, Mississippi district.

Benjamin F. Herbert, being duly sworn, says that he did, on the 6th day of February, 1838, deliver a copy of the within declaration and notice to James A. Stewart, and on the 9th of February, 1838, deliver a copy to John W. Leatherman, and on the 27th of February, 183 , deliver a copy to Thomas H. Prosser, and also a copy to Robert Morris.

B. F. HERBERT.

Sworn to and subscribed before me, this 10th day of March, 1838.

JOHN B. JONES, *Justice of the peace.*

Afterwards, to wit, at the term of the court last aforesaid, to wit, on the 8th day of June, in the year of our Lord one thousand eight hundred and thirty-eight, came as well the plaintiff, by his attorneys aforesaid, as the said Richard Roe, the casual ejector.

And it is ordered, by the consent of Howell and Johnston, for plaintiffs, and Montgomery & Boyd, attorneys for defendants, that James A. Stewart, Thomas H. Prosser, and Elizabeth his wife, John W. Leatherman, and Maybry Morris, be made defendants they being tenants in possession, in the stead of the non-defendant, Richard Roe, and do forthwith appear at the suit of the plaintiffs, and receive the declaration filed therein for the premises in question, so far as the same are in possession of said defendants respectively, or either of them, or their tenants, or any person claiming under their title; and shall forthwith plead thereto not guilty, and

upon the trial of said issue shall confess lease, entry, and ouster, and insist on their title only, otherwise judgment shall be entered by default against the non-defendant Roe; and if, upon the trial of said cause, the said defendants shall fail to make confession of said lease, entry, and ouster, whereby the plaintiffs shall not be able to prosecute said suit further against said defendants, then no costs shall be allowed for not further prosecuting the same, but said defendants shall pay costs to said plaintiffs, to be taxed in that event by the clerk of this court. And if said plaintiffs shall not further prosecute *his* said action, for any other cause than for not answering said lease, entry, and ouster, then they shall pay said defendants' costs, in that case to be taxed by the same clerk.

MONTGOMERY & BOYD, *P. D.*

JANUARY 7, 1838.

Plea.

And said defendants, James A. Stewart, Thomas H. Prosser, and Elizabeth his wife, John W. Leatherman, and Mabry Morris, come, by their attorneys, Montgomery & Boyd, and defend the force and injury, when, &c., and say that they are not, nor is either of them, guilty of the supposed trespass and ejectment above laid to their charge, in manner and form as said John Doe, on the demise aforesaid, hath above thereof complained against them; and of this they put themselves on the country, &c.

MONTGOMERY & BOYD, *P. D.*

And the plaintiffs do the like.

HOWELL & JOHNSTON, *for pltffs.*

And the cause was continued until the next term.

Afterwards, to wit, at a circuit court of the United States held, as aforesaid, at the town of Jackson, in and for the southern district of Mississippi, on the day of November, in the year of our Lord one thousand eight hundred and thirty-nine, (until which time this cause was legally continued,) came the plaintiff, by his said attorneys, and suggest to the court, that since the last continuance of said cause Thomas H. Prosser, one of the defendants in the stead of the casual ejector, hath died, which is not denied, but admitted to be true; and the cause is continued until the next term.

Afterwards, to wit, at a circuit court of the United States held at the town of Jackson, in and for the southern district of Mississippi, on the eighth day of November, in the year of our Lord one thousand eight hundred and forty-one, until which time this cause was legally continued, came as well the plaintiff, by his attorneys aforesaid, as the said James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, by their said attorneys; and a jury being called, came, to wit, Mark Alexander, John F. Watson, A. P. Towns, Wm. H. Martin, R. J. Mulhalland, S. W. Johnston, Isaac Christman, William Mortee, J. B. Catlett, Wm. Philips,

A. A. Catlett, and G. A. Pickett, who being empanneled, tried, and sworn to speak the truth concerning the matters within contained, and there not being time to finish the trial of said cause, the jury were adjourned by consent, and the cause continued until to-morrow.

And now at this day, to wit, at the November term of the court first aforesaid, at a subsequent day thereof, being the eleventh day of November, in the year of our Lord one thousand eight hundred and forty-one, until which time the jurors aforesaid, by consent, were regularly adjourned, came the parties aforesaid, by their respective attorneys, and the jurors named in the panel aforesaid also appeared, and having heard the evidence, say upon their oaths that the said defendants, James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, are not, nor is either of them, guilty of the said supposed trespass and ejectment in the declaration mentioned, and laid to their charge in manner and form as the said John Doe on the demise aforesaid hath above thereof complained against them, and as in pleading they have alleged.

Bill of exceptions tendered by the plaintiffs.

Be it remembered that, on the trial of the above cause, the counsel for the plaintiff read in evidence to the jury a copy of a plat and certificate of survey signed by Charles Trudeau, royal surveyor of the province of Louisiana, and a patent from the Spanish Government, legally and fully executed, thereupon issued to James Mather, dated April 3d, 1794, covering the lands in controversy.

Written evidence of notice, No. 1,782.

Spanish Government to Don Santiago Mather, Louisiana, in 1794, Natchez district.

Registered March 31st, 1804.—Patent for 2,000 arpents.

[For plat see original.]

Mr. Charles Treaudeau, royal and special surveyor for the province of Louisiana.

I certify that there has been measured and bounded, in favor of Mr. James Mather, a tract of two thousand arpents of land, superficial measurement, measured with the perch of the city of Paris, of eighteen feet (royal) in length, in accordance with the use and custom of this colony; which land is situated in the district of Natchez, about forty miles southeast of Fort Panmure, bounded on one side by the lands of Ezekiel Forman, and on the remaining sides by the vacant lands of his Majesty's domain, the limits are parallel, directed north eighty-two degrees east, by south eight degrees west, as indicated by the compass, without regard to the variations of the needle; at those limits the trees and posts were marked to designate the boundaries as figured in the plan, the survey having been executed in conformity with the decree of his

excellency the Governor General, &c., dated the seventh of February of the past year; and in witness whereof I grant the present certificate, with the figurative plan accompanying it, drawn conformably to the survey made on the twentieth of July of the aforesaid year. To all of which I give faith, April 7th, 1794.

CHARLES TRUDEAU,
Royal surveyor.

Don Francisco Louis Hector, baron of Carondelet, knight of the religious order of St. John, colonel in the royal armies, governor general, &c. &c. &c.

Having seen the foregoing despatches, executed by the surveyor of this province Don Carlos Trudeau, relative to the possession he has given to Don Santiago Mather, of the quantity of two thousand square arpents of land situated in the district of Natchez, about forty miles southeast of Fort Panmure, bounded on one side by lands belonging to Ezekiel Forman, and on the other sides by vacant lands of his Majesty's domain, as demonstrated in the foregoing figurative plan, and recognising it to be regulated by the rules of surveying, and by the grant made to the neighbor aforesaid, he not having suffered thereby, but consenting thereunto, as is proven by his assisting in said operations. Approving, as we approve of them, exercising the prerogative granted to us by the King, we confirm to the above named Mr. James Mather the said two thousand arpents of land, that as his own he may dispose of and enjoy them, being governed by the aforesaid despatches, and observing the conditions provided in such cases.

The present is given signed with my hand, sealed with my armorial seal, and countersigned by the secretary for H. M. gov-
[L. S.] ernment and intendency in the city of New Orleans, this 3d day of April, 1794.

EL BARON DE CARONDELET.

By order of his lordship.

ANDREW LOPEZ ARMESTO.

N. B. The words Don Santiago have been erased, and Mr. James substituted, or interlined, before signed.

STATE OF MISSISSIPPI, *Adams county:*

Before me personally appeared Timothy White, to me well known, who, being sworn, says, that the foregoing writing, with the plat, beginning at the words "written evidence," and ending with the name of "Andrew Lopez Armesto," is a true and faithful copy and translation of the Spanish patent or instrument of writing marked A, hereto annexed.

TIMOTHY WHITE.

Sworn to and subscribed this thirteenth day of April, 1840.

L. PITCHER, [L. S.]
Comm'r of circuit court of the U. S., southern dist. of Miss.

Plaintiffs' counsel also read to the jury a certificate of confirmation, as follows:

A, No. 763.—Register No. 1,782.

Mississippi Territory.

Board of commissioners west of Pearl river, established by a law of Congress regulating the grants of land, and providing for the disposal of the lands of the United States south of the State of Tennessee.

George Mather claims a tract of two thousand arpens of land, situated in Wilkinson county, on the waters of the Bayou Sarah, by virtue of a grant, under the authority of the Spanish Government, to James Mather, bearing date the third day of April, in the year one thousand seven hundred and ninety-four, having such shape, form, and marks, both natural and artificial, as are represented in the plat annexed to said grant, and legally conveyed to the claimant.

We do certify, that the said George Mather is confirmed in his title thereto, by virtue of the articles of agreement and cession between the United States and the State of Georgia.

Given under our hands, at the town of Washington, in the county of Adams, this tenth day of April, in the year one thousand eight hundred and six, and in the thirtieth year of the independence of the United States.

THOMAS RODNEY,
ROBERT WILLIAMS,
THOS. H. WILLIAMS,
Commissioners.

Attest: PARKE WALTON,
Clerk of the Board.

LAND OFFICE, *Washington, Mississippi.*

I hereby certify, that the within certificate is truly copied from the record in this office.

Given under my hand, this 6th August, 1839.

THOS. W. NEWMAN,
Register of the Land Office.

Also a copy of a deed from James Mather to George Mather, as follows:

James Mather to George Mather.—Deed of conveyance.

This indenture, made the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and three, between James Mather, a native subject of the King of Great Britain, but now residing in the province of Louisiana, of the one part, and George Mather, brother of the said James Mather, now residing in the

1060.

province aforesaid, of the other part, witnesseth, that the said James Mather, for, and in consideration of, the sum of ten thousand dollars to him, and before the ensealing and delivery hereof, in hand well and truly paid, the receipt whereof he doth hereby acknowledge, and thereof acquits, releases, exonerates, and forever discharges the said George Mather, his heirs, executors, and administrators, by these presents hath granted, bargained, sold, aliened, enfeoffed, released, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, and confirm, unto the said George Mather, and to his heirs and assigns, all that tract or parcel of land, containing two thousand acres, French measure, situate, lying, and being in the county of Wilkinson, in the Mississippi Territory of the United States, granted to the said James Mather, by letters patent bearing date the third day of April, in the year of our Lord one thousand seven hundred and ninety-four, under the hand and seal of the Baron de Carondelet, then Governor of the Province of Louisiana, and bounded, at the time of the survey, by the lands of Ezekiel Foreman on the north, and on other sides by lands then vacant, as by the said letters patent, reference being thereunto had, will more fully and at large appear; together *will* all and singular other the houses, outhouses, buildings, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining; to have and to hold the said tract or parcel of two thousand acres of land, hereditaments, and premises, hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, to the only proper use and behoof of the said George Mather, his heirs and assigns, forever. And the said James Mather, for himself, his heirs, executors, and administrators, doth covenant, promise, grant, and agree, to and with the said George Mather, his heirs and assigns, by these presents, that he the said James Mather, and his heirs, the said abovementioned and described tract or parcel of two thousand acres of land, hereditaments, and premises, hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, against him, the said James Mather, and his heirs, and against all and every other person or persons whomsoever, lawfully claiming or to claim the same, by, through, from, or under him, them, or any of them, shall and will warrant and forever defend by these presents. And further, that he, the said James Mather, and his heirs, and all and every other person or persons, lawfully claiming or to claim, by, from, or under him, them, or any of them, shall and will, from time to time, and at all times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said George Mather, his heirs and assigns, make, do, and execute, or cause and produce to be made, done, and executed, all and every such further and other lawful and reasonable act or acts, deed or deeds, device or devices, in the law whatsoever, for the

further, better, more perfect and absolute assurance and confirmation of the said tract or parcel of the two thousand acres of land, hereditaments, and premises, hereby granted or mentioned, or intended so to be, with the appurtenances, unto the said George Mather, his heirs and assigns, as by him or them, or by his or their counsel, learned in the law, shall be reasonably advised or required.

In witness whereof, the said James Mather has hereunto set his hand and seal, on the day and year first above written.

(Signed) JAMES MATHER, [L. S.]

Signed, sealed, and delivered in presence of
CHS. SURGET,
NATHAN MERIAM.

MISSISSIPPI TERRITORY, *county of Wilkinson, ss:*

Before the undersigned one of the justices of the county court, of the county aforesaid, came Charles Surget, one of the subscribing witnesses to the within indenture, and made oath, that he saw James Mather, the within named grantor, sign, seal, and deliver said indenture, as his free and voluntary act and deed, for the purposes therein mentioned, and that he, the said Charles Surget, subscribed his name as a witness of the execution of said indenture in presence of said grantor.

Given under my hand, the twenty-seventh day of July, in the year of our Lord eighteen hundred and three.

HUGH DAVIS, *Justice Peace.*

I, Thomas W. Newman, register of the land office at Washington, Mississippi, do hereby certify, that the foregoing deed of conveyance from James Mather to George Mather, is truly copied from the records of this office.

Given under my hand, this 23d day of March, 1840.

THOS. W. NEWMAN,
Register of the Land Office.

Which said copies were read without objection.

The following agreement of counsel, entered into previously to the amendment of the declaration by the addition of two new counts, was also read.

It is agreed between the counsel in the above action—

1st. That plaintiffs are heirs of James Mather, and whatever title he had at his death vested in them, or any others, his heirs, to be shown.

2d. That defendants are possessed of the title of Stark's heirs to the premises.

3d. That all legally certified copies of title papers be admitted in lieu of the original, subject to the objections to which the original would be subject; and that sworn translations of Spanish grants be admitted in evidence, subject to the same objections as the ori-

ginal, and to any objection on account of the translations being defective.

4th. That the defendants are in possession of the lands, &c., in controversy, and were so at the time this suit was brought, under derivative titles from Robert Stark's heirs, valid so far as Stark's title was valid.

5th. That the name of N. Hickey be stricken out of plaintiffs' declaration, and that the word "senior" be inserted in lieu of the word "junior," after the name of W. Wykoff.

G. WINCHESTER, *for Defendants.*
HOWELL & JOHNSTON.

The following depositions of Thomas Gibbes Morgan and Charles Tessier were also read without objection:

Circuit court, ninth judicial circuit, southern district of Mississippi.

DOE on demise of Hickey, Wykoff, Duncan, &c.,
vs.
STEWART, PROSSER, LEATHERMAN, & MORRIS, et al. } Ejectment.

The undersigned, counsel in the above cause, agree that D. D. Avery, esquire, of Baton Rouge, shall examine the Hon. Charles Tessier and Thomas G. Morgan, witnesses in behalf of plaintiffs in the above cause, and reduce to writing the answers of the said witnesses to the following interrogatories and cross interrogatories, the said Tessier and the said Morgan being duly sworn thereto, and that the said answers shall be read in evidence, the same being certified by the said D. D. Avery, esqr., to have been taken in pursuance of this agreement, the said questions and answers to be subject only to legal objections.

WINCHESTER, S. S. BOYD.
HOWELL & JOHNSTON.

Questions by plaintiffs' counsel.

1st. Were you acquainted with George Mather, senior; if so, at what time did he die? and with James Mather, and when did he die?

2d Question. Were you or not intimate with the family of the Mathers; if so, state who were the heirs of said George Mather, senior.

3d Question. Did you ever hear from the members of the family or any of them, deceased or now living, who George Mather's, senior heirs were, and whether he died without issue?

4th Question. Look on paper marked A, and say whether the signature thereto is in the handwriting of George Mather, junior.

(4th Question withdrawn.)

Cross-Interrogatories.

1st. When did you first become acquainted with George Mather, senior, and in what parish did he reside previous to and up to the time of his death?

2d. If you state who were heirs in answer to plaintiff's second interrogatory, please state how and from what source you derive your knowledge that they were the heirs of George Mather, senior, deceased.

3d. In what degree of relationship are each of the persons you have named as heirs, related to George Mather, senior; and do you know of your own personal knowledge whether there was or not a person or persons alive at the time of the death of said George Mather, senior, more nearly related to him?

4th. Did you know all the brothers and sisters, or descendants of them, of George Mather, senior, and where they lived, and whether they survived him, and who and how many survived him?

5th. Did you know George Mather, junior; how near was he related to George Mather, senior? Is he now alive, or if dead did he leave any descendants, or brothers and sisters, or descendants of them, or any of them?

6th. Are you related or connected with any of the plaintiffs in this suit?

The third interrogatory of plaintiff is objected to, and the fourth interrogatory is objected to, because paper A, to which it refers, does not accompany the interrogatory, nor any copy thereof.

G. WINCHESTER, *for defendants.*

CIRCUIT COURT,

Ninth judicial circuit, southern district of Mississippi:

DOE on the demise of HICKEY, WYKOFF, DUNCAN, et al
vs.
STEWART, PROSSER, LEATHERMAN and MORRIS, et al.

In pursuance of the annexed consent of parties in the above entitled cause, I have caused the witnesses therein named to appear before me, at my office in the town of Baton Rouge, State of Louisiana, and they and each of them having been first sworn by Augustin Duplantine, esq., a justice of the peace, in and for the said parish and State, upon the Holy Evangelists of Almighty God, to declare the truth, the whole truth, and nothing but the truth, in answer to the said interrogatories and cross-interrogatories, I first propounded the said interrogatories to Thomas Gibbes Morgan, one of the said named witnesses, who answered as follows:

In answer to the first interrogatory, the witness saith: that he never knew George Mather, senr., or James Mather, senr. That he (witness) first came to the parish of East Baton Rouge in the autumn of the year eighteen hundred and twenty-two. That within a few days after his arrival in said parish, he became acquainted with the plaintiffs, and then understood from them that their father, (that is, the father of Mrs. Ann Hickey, Eliza Wykoff, Frances S.

Duncan, and George Mather, junr.) James Mather, senr., had died shortly previous. The family were, at the period referred to, in deep mourning, and as he then was informed in mourning for the said James Mather, senr. Witness does not know when George Mather, senior, died, or where.

In answer to the second interrogatory, he saith: that since the year eighteen hundred and twenty-two he has been on intimate terms with the Mather family, and never knew or heard of any heirs of George Mather, senr., except James Mather, senr., and his children Anna Hickey, Eliza Wykoff, Frances S. Duncan, and George Mather, and James Mather, also a child of the said James Mather, senr., who died, as affiant has been informed and believes, before his said father, unmarried and without legitimate issue. Affiant has known several other relatives of the said James and George Mather, senior, but never heard any one of them pretend to have any claim to the estate of George Mather, senr.

In answer to the third interrogatory, he saith: that he has frequently heard from the members of the said family, and from many others who said they were personally acquainted with the said George Mather, senr., that he died without legitimate issue.

In answer to the first cross-interrogatory, he saith: that as he has before stated, he never knew George Mather, senr.; that he has frequently been told by the family, and by others who did know him, that he died at the parish of East Baton Rouge aforesaid; that for many years previous to his decease he had resided at the said parish, of which he was at one period parish judge.

In answer to the second cross-interrogatory, he saith: that he has no knowledge of the fact except from the family, and from hearing the fact frequently asserted by persons not of the family, and never having heard it contradicted or doubted, and from the fact, that George Mather, jun., was at the time witness first came to the said parish, in possession of a tract of land, in the said parish, which, witness knows from having seen the titles, belonged to and formed a part of the estate of the said George Mather, sen., at the time of his decease; that the said George Mather, jun., continued in the possession of the said tract until the time of his decease, and it has since been sold as a part of his estate.

In answer to the third cross-interrogatory, he saith: that he has always been informed that James Mather, sen., was the brother of George Mather, senr., and has never heard that there was any person or persons alive at the time of the death of George Mather, sen., more nearly related to him. The other persons named, to wit: Anna Hickey, Eliza Wykoff, Frances S. Duncan, and George Mather, junr., were the neices and nephew of the said George Mather, senr., and he has never heard of any persons more nearly related to him than they were, except their father as aforesaid.

In answer to the fourth cross-interrogatory, he saith: that he never knew any of the brothers or sisters of the said George Mather,

senr., and never heard that he had any brother or sister except the said James Mather, senior.

In answer to the fifth cross-interrogatory, he saith: that he was intimately acquainted with George Mather, jun., during many years; witness always understood him to be the nephew of George Mather, senr. George Mather, jun., died several years since, he left a widow and seven children, to wit: George T., Aurora, now wife of A. M. Tureaud, James, Alexander, Charles, Joseph, and Louisa. His sisters were Anna, wife of Philip Hickey, Eliza, wife of William Wykoff, all now living, and Frances Sophia, late wife of Abner L. Duncan, both deceased, leaving the following children: Frances S., now wife of Frederick D. Conrad, Hannah, now wife of Alfred T. Conrad, Eliza, who died unmarried, and Abner.

In answer to the sixth cross-interrogatory, he saith, that he is not related to any of the plaintiffs; that he is not connected with any of them, except as follows, one of the brothers and one of the brothers-in-law of witness are married to the daughters of Philip and Anna Hickey.

THOMAS GIBBES MORGAN.

Sworn to and subscribed before me, this 29th day of April, A. D. 1840.

A. DUPLANTER, *J. Peace.*

Sworn to and subscribed in presence of the undersigned commissioner, this 29th April, A. D. 1840.

DANL. D. AVERY.

Then came and appeared the Hon. Charles Tessier, who being duly sworn as aforesaid, as one of the witnesses named in said article of consent, I propounded the interrogatories and cross-interrogatories therein contained, and reduced the answers of the same to writing, as follows:

In answer to the first interrogatory, witness saith, that he was personally acquainted with George Mather, senior, that he never was married, and died about the year eighteen hundred and twelve. That he was acquainted with James Mather, senior, brother of George Mather, senior, and that he died some years after his brother George.

To interrogatory second, witness saith, that he was acquainted with the family of the Mathers, knows that George Mather, senior, died without leaving any descendants, and never knew of any other heir than his brother James Mather, senior.

To interrogatory third. This interrogatory is answered by the answer to the second interrogatory.

Answers to the cross-interrogatories.

To 1st cross-interrogatory. First became acquainted with George Mather, senior, about the year eighteen hundred and eleven; that

he resided in the parish of East Baton Rouge, some years previous to his death, and up to the time of his decease.

To 2d cross interrogatory. The said George Mather, senr., having no legal descendants, which fact he knows from personal knowledge, he believes James Mather, senr., to have been his only heir, having never known or heard of his having any other brothers or sisters.

To 3d cross interrogatory, he saith, that the same is answered by the reply to 2d cross interrogatory.

To 4th cross interrogatory, he saith, that he never knew that George Mather, senior, had any sister, or that he had any other brother than James Mather, senior, who lived a part of his time in the parish of East Baton Rouge; that Anna Hickey, and Eliza Wykoff, Frances S. Duncan, and George Mather, junior, were the only descendants of James Mather, senior, and that they all survived their father.

To cross interrogatory 5th, saith, he knew George Mather, junior, who was a nephew of George Mather, senior; that George Mather, junior, is now dead; that at the time of his death he left a number of children, who are now living, and the names of whom he is not acquainted with.

To cross interrogatory 6th, saith, that he is not related or connected with any of the plaintiffs in this suit.

CHS. TESSIER.

Sworn to and subscribed before me, this 29th day of April, A. D. 1840.

A. DUPLANTER, *J. Peace.*

Sworn to and subscribed in presence of the undersigned commissioner.

Witness my hand and private seal, at Baton Rouge, this twenty-ninth day of April, A. D. eighteen hundred and forty.

DANL. D. AVERY.

It was admitted that Stark's heirs, under whom defendants claim, were in possession of the lands in controversy in 1829, and since, till defendants entered into possession; and that defendants were, at the time of bringing this suit, *were* and still are, in possession of said lands.

The counsel for defendants then offered to read the following record:

Pleas before the honorable John P. Hampton and Powhattan Ellis, esqrs., judges in and over the State of Mississippi, at a supreme court held at Natchez, in and for the State aforesaid, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-four.

Be it remembered, that heretofore, to wit, at a supreme court of the State *of the State* of Mississippi, at the city of Natchez, on the

second Monday in June, in the year of our Lord one thousand eight hundred and twenty-one, the judges of a superior court, at a superior court held at the court-house, in and for the county of Adams, on the third Monday in November, in the year of our Lord one thousand eight hundred and twenty, transmitted to the said supreme court the following order, to wit:

Superior court, November term, 1820.

STATE OF MISSISSIPPI, *Adams county:*

ROBERT STARK'S heirs, vs. JAMES MATHER et al. } In chancery.

The court doubting as to the law in this case, it is ordered to be transferred to the supreme court, and to be continued to the June term *term* of said court, in 1821.

A true extract from the minutes.

(Signed) JNO. F. GRIFFITH, *Clerk.*

Whereupon the bill, answers, exhibits, and papers, which were lately depending before the superior court aforesaid, between Robert Stark, Alexander B. Stark Theodore Stark, Horatio Stark, Mary Wormley, Rebecca Willison, Francis Gildart, and Sophia his wife, late Sophia Stark, and Elizabeth Stark, heirs and legal representatives of Robert Stark, deceased, complainants, and James Mather, defendant, were transmitted to the said supreme court, and follow in these words, to wit:

To the honorable the judges of the superior court of law and equity, for the county of Adams, in chancery sitting, humbly complaining, showeth unto your honors, your orators, Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Rebecca Willison, Francis Gildart, and Sophia his wife, late Sophia Stark, and Elizabeth Stark, heirs and legal representatives of Robert Stark, deceased, that some time on or about the 29th day of December, in the year 1791, their ancestor, Robert Stark, obtained from the Governor General of the Province of Louisiana, Esteven Miro, a warrant or *or* of survey for two thousand acres of land, square measure, on the waters of the Bayou Sarah, in the then Natchez district, now part of the Mississippi Territory of the United States, which warrant or order of survey, together with the actual survey of the said tract of land, made by the deputy surveyor of the said district, William Dunbar, now deceased; and the petition of the said Robert Stark is now in the possession of your orators, ready to be produced as your honors shall direct, and which they pray may be taken as a part of this their bill of complaint.

And your orators further complaining, show unto your honors, that in obedience to the direction of the said warrant or order, the said Robert Stark was put into full and certain possession of the

said tract of land, by the proper authority, and that he not only complied with all the conditions specified in the said warrant, but continued for the space of —— years to cultivate and improve the same, made an extensive clearing thereon, and raised several crops on it, and paid all the customary expenses of surveying, and advanced the fees necessary to procure the necessary patent for the further completion of the title.

And your orators further state unto your honors, that some time on or before the year seventeen hundred and ninety, the said Robert Stark not being entirely satisfied with the situation and neighborhood of the said tract of land, and being advised that he could locate a tract of land in a situation better situated to his views, and to much greater advantage to his large and rising family, proposed to the Governor of the Natchez district, Don Manual Gayoso de Lenos, to relinquish the said tract of land to the Spanish Government, on the express condition that he should receive in exchange thereof from the Government, a tract of land equal thereto in value, in such part of the district as he might elect. But your orators represent, that from some cause unknown to them, the said commandant had conceived a dislike to the said Robert Stark, and manifested for some time a strong disposition to deprive him of his right and title to the said tract of land; to this end, the said commandant, some time in the year one thousand seven hundred and ninety- , made a verbal proffer of the said tract of land to a certain James Mather, whom your orators pray may be made a defendant to this their bill of complaint, with apt words to charge *them* as such; and the same was immediately thereafter, some time in the year one thousand seven hundred and ninety-four, granted by the Spanish Government to the said James Mather, who took possession of the same, with a large crop of corn then growing on the ground, together with all the buildings and improvements made thereon by the said Robert Stark; in consideration of which, the said Robert Stark never received, as he had a right to expect, any equivalent in land elsewhere. Against all which acts, the said Robert Stark solemnly protested as being unjust and unlawful.

And your orators further complaining, show unto your honors, that they are informed and verily believe, that the said James Mather, who had a perfect knowledge of the title of the said Robert Stark, obtained the grant for the said tract of land entirely through the influence of the said title, after the said Robert Stark, and through the false and fraudulent representations in writing of the said William Dunbar, deputy surveyor of the said district, and other officers of the said Government, who were urged and excited thereto by the said James Mather; in part evidence whereof, your orators have now in their possession a memorandum in the handwriting of the said William Dunbar, at the foot of the original warrant or order of survey herein alluded to, purporting to be a sale and release of the said two thousand acres of land to the said William Dunbar,

and to have been subscribed by the said Robert Stark. The said warrant of survey had been in the possession of the said William Dunbar for some time, and when it was delivered to the said Robert Stark, which was after the land in question had been regranted to the said Mather, it had the memorandum mentioned, but so obliterated, apparently by *by* design, to be but partially legible.

And your orators further state, that according to the laws, customs, and usages of the Spanish Government, a Spanish warrant or order of survey, was considered as equivalent to a complete grant, and on the parties fulfilling the conditions required thereby, a fee simple passed to the warrantee, and the Government never regranted the lands so conveyed, unless the same became forfeited to the crown, or by consent of the holder of the warrant. Indeed, in later days, the Spanish Government did not exact from the grantees of lands the performances of many of the conditions required in the first settlement of the country, and all sales and transfers of lands were required to be in writing, and the conveyance to be valid must have been filed or recorded in the public office.

Your orators are informed and believes that the said Robert Stark never committed any act under the said Government, by which he forfeited his right to the said tract of land, nor did he ever dispose of the same to any person whatsoever, or give his consent, verbally or in writing, regranting the same.

And now, so it is, may it please your honors, the said defendant, James Mather, combining and confederating, to and with divers persons, to your orators at present unknown, but whom, when discovered, your orators pray may be made defendants hereto, with apt and proper words to charge them as such, how to injure and oppress your orators, continues to hold possession of the said tract of land, against the just and equitable claim of your orators, and even refuses to account to your orators, as he refused to account to your orators' father, the said Robert Stark, in his lifetime, for all the improvements of his boundaries, and large quantities of corn and other produce, to the amount of several hundred bushels, which the said defendant found on the said plantation and tract of land when he so iniquitably got possession of the same; some times alleging that the said Robert abandoned his right and title to the said tract of land, and that the same was thereafter lawfully and fairly regranted to him by the Spanish Government; at others alleging that the said Robert Stark forfeited the same by not fulfilling the conditions of the warrant; and at other times, that the said Robert Stark transferred his right thereto to the said William Dunbar, who conveyed the same to the said defendant; and that it was by the consent of the said Robert Stark, that the said tract of land was regranted by the Spanish Government to the said defendant. All which actings and doings are contrary to equity and good conscience, and tend to the great injury of your orators.

In tender consideration whereof, and for as much as your orators are remediless in the premises, except in this honorable court,

where matters of this kind are properly cognizable, to the end therefore that the said James Mather and his confederates, when discovered, may, on their several and respective corporate oaths, perfect, full, and true answers make, to all and singular the premises, as fully and particularly as if they were herein again repeated and interrogated. And by a decree of this honorable court, the said James Mather be compelled to surrender unto your orators, the full and entire possession of the said tract of land, together with the evidences of title which he has thereto, and that your orators may be quieted in their title thereto, and that your honors will grant unto your orators such other and further relief in the premises as to them shall seem meet.

May it please your honors, the premises considered, to grant unto your orators the Territory's writ of subpœna, directed to the said defendant, James Mather, commanding him to be and appear in this honorable court, on a certain day to be therein named, and under a certain penalty, to answer the allegations of this bill of complaint.

And your orators, as in duty bound, will ever pray, &c.

TAYLOR & SHIELDS,
Att'ys for Complainants.

The amended bill of complaint of Robert Stark, Alexander B. Stark, Theodore Stark, Mary Wormley, Rebecca Willison, Sophia Gildart, Horatio Stark, and Elizabeth Stark, heirs and representatives of Robert Stark, deceased, to the original bill of complaint exhibited by complainants against James Mather, defendant, in which amended bill George Mather, on his own application, is made defendant with the said James Mather.

Your orators and oratrice, repeating, charging, and insisting on every thing set forth and stated in their original bill, to which this is an amendment, further state, that your orators and oratrice have understood, since filing their said original bill, that the said George Mather pretends, and holds out in speeches, that the said James Mather, one of the defendants and the father of said George Mather, conveyed the said tract of land to one George Mather, brother of him the said James, and that he the said George Mather devised the same to the said defendant George Mather, his nephew. But your orators and oratrice expressly charge, that if any such conveyance and devise was made, it was for the purpose of defrauding your orators and oratrice out of their equitable right and title to said land; for they say it was a matter of perfect notoriety, not only in the family and among the connexions of the said James Mather, but in the neighborhood, that the said Robert Stark, the elder, in his lifetime, and his heirs and representatives after his death, claimed title to said land, and of which the said George Mather, the brother of the said James, and the said George, one of the said defendants, had full notice, before any conveyance or devise as is

pretended took place, if any such ever was made; all which actings and pretensions of said George Mather are contrary to equity and good conscience. To the end, therefore, that the said George Mather may, upon his corporal oath, true, distinct, and perfect answers make to all and singular the matters and things herein before stated, as fully and effectually as if the same were here again repeated and interrogated to, may be answered unto, and that this honorable court would not only decree as is prayed for in the original bill in this case, but that the said George Mather convey to your orators and oratrice all and every claim and pretence which he may have to said land; and that your orators and oratrice may have such other and further relief in the premises as the nature of the case may require; and that the said George Mather may appear and answer the premises, and abide by such order and decree as to your honors shall seem meet. And your orators and oratrice will ever pray, and so forth.

SHIELDS & TAYLOR,
Complainants' counsel.

The separate answer of James Mather, one of the defendants to the bill of complaint of Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Rebecca Willison, Francis Gildart and Sophia his wife, late Sophia Stark, and Elizabeth Stark, complainants.

The defendant now, and at all times hereafter, saving and reserving to himself all and all manner of length and advantage of exceptions to the manifold inaccuracies, untruths, and imperfections in the complainants' bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised materially concerns him to make answer unto, he answereth and saith, that he has been informed, and believes it to be true, that the said Robert Stark, ancestor of the complainants, did obtain an order or warrant of survey for two thousand acres of land from the Governor of the province of Louisiana, about the time in the complainants' bill mentioned in that behalf; and this defendant has also been informed, that the tract of land mentioned in the complainants' bill was surveyed by the deputy surveyor for their said ancestor, and that he resided on it for a short time; but this defendant denies that the said Robert Stark, deceased, made either an extensive or costly improvement on said tract of land; and whether said Robert Stark, deceased, or any person for him, paid any expense or fees for surveying said tract of land, or for the warrant, this defendant is wholly ignorant.

And this defendant further answering saith, that some time in the year 1792 he wished to purchase a tract of land from the Spanish Government in the district of Natchez, now Mississippi territory, and for that purpose applied to Manuel Gayoso de Lemos, then Governor of the district of Natchez, who informed the defen-

dant that the tract of land now in question was vacant, and that it would be granted to this defendant on his petition therefor. This defendant was informed that the said Robert Stark, deceased, had resided for a short time on the said tract of land, and inquired of said Governor if he had no claim thereto, or expectation of holding it, and was informed by said Governor that said Robert Stark, deceased, had abandoned and given up said tract of land, and had no claim thereto. This defendant then applied to the said Robert Stark, deceased, then at the office of the said Governor, and inquired of him if he had any claim to the said tract of land; who then answered this defendant that he had no claim thereto; that he had abandoned it, and should quit the country, and that this defendant was at full liberty to apply for said tract of land. Whereupon the defendant petitioned for said tract of land, and obtained an order of survey therefor from the Governor of the then province of Louisiana, dated on or about the 17th day of February, 1793, and the same was actually surveyed for this defendant by William Dunbar, then deputy surveyor, in the complainants' bill named, on or about the 20th of July in the year last aforesaid, and this defendant put in possession thereof; and on or about the 3d day of April then following, a patent therefor in due form was issued to this defendant by the then Governor of the province of Louisiana, to whom the granting did pertain.

And the defendant further answering saith, that during the whole time this defendant was procuring and perfecting his title to the said tract of land, the said Robert Stark, deceased, made no claim or pretence to the same.

And this defendant further answering saith, that at the time of procuring said title to said tract of land, he had no notice or intimation of any claim or title thereto by the said Robert Stark, deceased, but, on the contrary, the said Robert Stark assured this defendant that he had no claim or title thereto; on which this defendant insists, the same as if it were pleaded.

And this defendant, further answering, does not admit, but denies, that when said Robert Stark, deceased, abandoned or relinquished said tract of land to the Spanish Government, that he made any condition with the Government or commandant of the district of Natchez to have any other land in lieu thereof; but this defendant says, and so the truth is, that said Robert Stark abandoned said tract of land with a view of leaving the country, and did actually quit the country immediately after relinquishing and abandoning said tract of land, and made no application whatever for other lands in the Spanish dominions.

And this defendant answering saith, that he has been informed, and verily believes, that when said Robert Stark, deceased, abandoned said tract of land, and quitted the Spanish dominions, the said warrant or order of survey was left in the hands of the deputy surveyor before named, and was never again possessed thereof till

the said Robert Stark, deceased, returned to the Mississippi Territory, after the establishment of a government therein under the jurisdiction of the United States; and that said warrant, by some means, came into the hand of the said Robert Stark after his return under the American Government; and that said Robert Stark, deceased, instituted his action of ejectment against the tenant of this defendant, James Slatts, then in the possession of the said tract of land, in the then district court of the district of Adams, to which action this defendant made defence by his said tenant, and on the trial permitted the said Robert Stark to give in evidence every pretence of title on his part, either written or parol, and on said trial a verdict and judgment was rendered against said Robert Stark, deceased, on a full investigation of the merits of said cause, either equitable or legal. All of which will more fully appear by the record and proceedings of the said suit in said court remaining, and which this defendant prays may be taken as a part of his answer.

And this defendant, further answering, denies that he ever took possession of any crop of corn, or other property belonging to the said Robert Stark, deceased. And this defendant also denies that he ever had any collusion, in any manner whatever, with said William Dunbar, deceased, respecting said tract, nor does he believe that said William Dunbar ever practised any fraud or designs on the said Robert Stark, deceased, respecting the same.

And this defendant further answering, says, that on or about the 26th day of April, 1803, he sold and conveyed the said tract of land in fee simple to George Mather, since deceased, for a full and valuable consideration in money and services paid to and performed for this defendant by the said George Mather in his lifetime.

And the said defendant further answering, saith, that the said defendant and the said George Mather in his lifetime, and those claiming under him since his death, have been in possession of said tract of land for more than twenty years, occupying, cultivating, and improving the same; on which the defendant himself insists the same as if it were pleaded.

And this defendant further answering, denies all and all manner of frauds and combinations wherewith he stands charged, without this, that any other matter or thing in the complainant's bill contained, and not herein and hereby fully answered, averred, traversed, or denied, is true in such manner and form as therein stated, and prays to be hence dismissed with his reasonable costs most wrongfully sustained.

LY. HARDING, *for defts.*

James Mather, the above named defendant, maketh oath that the matters and things stated in the foregoing answer as of his own

knowledge are true; and the matters and things therein stated as from information of others he believes to be true.

JAMES MATHER.

Sworn to and subscribed before the undersigned,

CHARLES FOSSER, *Parish Judge.*

Plea of G. Mather.

The pleas of George Mather, one of the defendants to the bill of complaint of the heirs of Robert Stark, deceased, complainants.

This defendant by protestation not confessing all or any part of said bill to be true, in manner thereunto set forth, for plea thereto, saith: that George Mather, now deceased, was a purchaser in his lifetime of all the lands and tenements in the complainants' bill mentioned, for a valuable consideration, in money and services really and *bona fide* paid to and performed for said James Mather in said bill named, without the notice of the complainants' pretended title in said bill mentioned, or that of the said Robert Stark, deceased; and that the said James Mather did, by good and sufficient conveyances in the law, as this defendant is advised, convey the same lands and tenements, to the said George Mather in his lifetime, and his heirs, absolutely without any manner of condition whatever; and that the defendant derives title to said lands and tenements from the said George Mather, deceased; all which said matters and things this defendant is ready to aver and prove, as this honorable court shall award, and humbly pleads the same in bar to the complainants' said bill of complaint, and prays the judgment of this honorable court thereon.

LY. HARDING, *coun. deft.*

George Mather, the above named defendant, makes oath that the matters and things stated in the foregoing plea are true to the best of his knowledge and belief.

GEORGE MATHER.

Sworn to before me, in testimony whereof I have hereunto set my hand and seal at Baton Rouge, Oct. 14th, 1815.

[SEAL] CHARLES FOSSIER, *Parish Judge.*

Replication.

The replication of Robert Stark, Alexander B. Stark, Theodore Stark, Horatio Stark, Rebecca Willison, Mary Wormley, Sophia Gildart, and Elizabeth, heirs and legal representatives of Robert Stark, deceased, to the separate answer and plea of James Mather and George Mather, defendants.

The replicants saving and reserving to themselves all and all manner of advantge of exceptions to the manifold insufficiencies of said answer and plea, for replication thereto, say, that they will aver and prove their said bill to be true, certain and sufficient in law to be answered unto; and that the said answer and plea of said defendants are uncertain, untrue, and insufficient to be replied

unto, without that, any other matter or thing whatsoever in the said answer and plea contained, material or effectual in law to be replied to, *be replied to*, and herein not replied unto, confessed and avoided, traversed or denied, are true. All which matters and things these replicants will be ready to aver and prove as this honorable court shall award, and here pray as in and by their said bill they have already prayed.

TAYLOR & SHIELD,
Complainants' counsel.

This cause was then legally continued.

Afterwards, to wit, at a superior court of the State of Mississippi, held at the city of Natchez, and court house of Adams county, on the second Monday of December, in the year of our Lord one thousand eight hundred and twenty-one, (1821,) the following was made, to wit: ordered, that an issue be made up by the parties in this case, to ascertain whether the ancestor of the complainants ever made a voluntary abandonment of his right to the premises in question, free from any undue influence on the part of the Spanish Government or its officers; and that the said issue and verdict be directed to the superior court of Adams county, to be tried at the next term.

Afterwards, to wit, at a superior court of the State aforesaid, held at the town of Columbia, and county of Marion, on the second Monday of June, (A. D. 1822,) in the year of our Lord one thousand eight hundred and twenty-two, this cause was legally continued.

Afterwards, to wit, at a superior court of the State aforesaid, held at the city of Natchez, at the court house of Adams county, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-two, the following order, in addition to the one last made, was made, to wit: "and it is further ordered, that on the trial of the issue directed in this case at December term of said court, 1821, the evidence heretofore taken in the case be read and heard, and such other evidence as is properly admissable in such trials; and that the defendant in the bill tender the issue to the complainants on or before the first day of the next term of the circuit court of Adams county, which shall be tried at said term."

Whereupon, the following issue was made and transmitted to the court last aforesaid, to wit:

"Be it remembered, that at the December term, 1821, of the Supreme Court, the said court made an order on a case pending before it in chancery, wherein Stark's heirs are complainants, and James Mather and George Mather are defendants, that an issue be made up by the parties in this case, to ascertain whether the ancestor of complainants ever made a voluntary abandonment of his right to the premises in question, free from any undue influence on the part of the Spanish Government or its officers, and the said

and evidence be directed to the superior court of Adams county to be tried at the next term. And whereas, also, the said supreme court at the December term, 1822, made a further and supplemental order, which among other things directs that the defendants in this bill tender the issue to the complainants, on or before the first day of the next term of the circuit court of Adams county. Now the said defendants give the court to understand and be informed, and so aver the fact to be, that the ancestor of the said complainants named in said bill and answer, did make a voluntary abandonment of his rights to the premises, in the bill mentioned, to which said bill they refer for greater certainty, as also to the answer; without that, that the said Stark, the ancestor of the said complainants, was compelled by any undue influence or force on the part of the Spanish Government, or its officers, to make the said abandonment and to relinquish his rights to the land in *in* the said bill and answer mentioned, and so they are ready to verify.

THOMAS B. REID, and
TURNER, and
METCALF, *for defts.*

And the complainants in said bill, in conformity to the directions of the said supreme court in chancery sitting, by whom the order for said issue was made, say, that their ancestor, the said Robert Stark, in the said bill mentioned, did not make a voluntary abandonment or surrender of his claim, right, and title, to the said lands and premises, free from any undue influence or coercion on the part of the Spanish authorities, its government or officer, and this they pray may be inquired of by the country, &c.

RANKINS, ADAMS & CHILDS,
Counsel for Complainants.

Whereupon the issue, and all the other papers relating thereto, were transmitted to the circuit court of Adams county.

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, in the city of Natchez, on the second Monday of June, in the year of our Lord one thousand eight hundred and twenty-three, the papers relating to the cause, as also the verdict, were transmitted to the said supreme court, from the circuit court of Adams county aforesaid, which said verdict is as follows, to wit:

Circuit court, May term, 1823.

STATE OF MISSISSIPPI, *Adams county:*

ROBERT STARK'S heirs,
vs.
MATHER & MATHER.

Verdict.

A jury called, came, to wit, Robert Gudley, H. F. Walworth, Richard Cecil, James B. Moore, David H. Hough, Arthur Brown,

John Nugent, C. T. Beil, William B. Mulvin, and John Cannon, David Dunn, Travers Grant, who, on their oaths, say, we of the jury find that the complainants' ancestor, Robert Stark, *did not* make a voluntary abandonment and surrender of his claim, right, and title to the said land and premises in said bill mentioned, free from any exercise of undue influence or coercion on the part of the Spanish authorities, its government or officers.

I certify the above to be a true extract from the minutes of said court.

Given under my hand, and seal of said court, the 9th day of June, 1823.

(Signed) JOHN F. GRIFFITH, *Clerk.*

Exceptions to verdict.

To which said verdict, the following exceptions were filed, to wit: "And now the said defendants, by Reid & Turner, their counsel, come and except to the finding of the jury, and to the form of the verdict, and return on the issue directed to be tried at law in this case, for the following reasons, to wit:

1st. Because the said verdict is contrary to evidence.

2d. Because the subject matters of said issue is more proper triable by the court than by a jury, being a mixed question of law and fact.

3d. Because the judge before whom the issue was tried has made no report of the evidence, of the finding of the jury, nor of his opinion on the case, whether he is satisfied or dissatisfied with the verdict.

4th. Because said verdict is in other respects insufficient, and wants form and substance.

(Signed) E. TURNER, *Deft's. Counsel.*"

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, city of Natchez, on the second Monday of December, in the year of our Lord one thousand eight hundred and twenty-three, this cause was legally continued.

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court-house of Adams county, city of Natchez, on the second Monday in June, in the year of our Lord one thousand eight hundred and twenty-four, the following affidavit was made and filed, to wit:

THE STATE OF MISSISSIPPI, *Supreme court:*

ROBERT STARK'S heirs, vs. JAMES MATHER. } In chancery.

Edward Turner makes oath, that he has been credibly informed, and verily believes it to be true, that James Mather, one of the defendants in this suit, is not now in being, that he departed this life some time in the year 1822 or 1823, in the State of Louisiana.

(Signed) E. TURNER.

Sworn to and subscribed in open court, this 15th day of June, 1824.

HOWELL MOSS, *Clerk.*

Whereupon, the death of James Mather is suggested, and the cause argued, and taken under advisement by the court.

Afterwards, and at the same term of the court last aforesaid, the court ordered a re-argument to be had in said case, and the following order made, to wit:

It appearing to the satisfaction of the court that James Mather, one of the defendants in said cause, has departed this life during the pendency of said cause in said court, and that the heirs and legal representatives of James Mather are not residents of this State, but are residents of the State of Louisiana, it is therefore ordered by the court, that the said heirs and legal representatives of the said James Mather, come forward by the next term of this court, to be held on the second Monday in December next, at the court-house in the city of Natchez, and cause themselves to be made defendants to said bill of complaint, or the same will be taken for confessed against them. It is further ordered, that a copy of this order be published three times in any paper in the city of New Orleans.

Afterwards, to wit, at a supreme court of the State aforesaid, held at the court house of Adams county, city of Natchez, on the second Monday in December, in the year of our Lord one thousand eight hundred and twenty-four, this cause was revived in the name of George Mather, Anna Mather Hickey, Philip Hickey, Elizabeth Mather Wykoff, and Frances Sophia Mather Duncan, heirs at law of the said James Mather, deceased, and the cause argued fully, and the following order made, to wit: 'Decree signed and ordered to be enrolled, and ordered that no execution issue for ten days after the adjournment of court.' Whereupon, the following decree was made in said court and enrolled, to wit:

In the supreme court, December term, 1824.

ROBERT STARK,
vs.
THE LEGAL REPRESENTATIVES of George Mather and James Mather.

This cause coming on for final hearing upon re-argument before the supreme court of the State of Mississippi in chancery sitting, upon bill and amended bill of complainants, the answer of defendants and plea of one of the defendants, and replication thereto, together with the depositions, exhibits, and the verdict of the jury in said cause on all issue awarded by the court, and counsel on both sides having been heard, the substance of the bill appearing to be, that some time in the year 1791, Robert Stark, the ancestor of the complainants, obtained from the governor general of the province of Louisiana, Estiven Miro, a warrant or order of survey for 2,000 acres

of land, square measure, on Bayou Sara, in the then Natchez district, now Wilkinson county of this State, which warrant, and the evidence of actual survey in pursuance thereof, by William Dunbar, deputy surveyor of the said *said* district, and the petition of the said ancestor therefor, are in possession of the complainants, ready to be produced. That their said ancestor was put in the possession of the said tract of land by the proper authorities, conformable to the instructions and requirements contained in said warrant of survey, and complied on his part with all the conditions of cession, continued for several years in possession, made extensive clearings, raised several crops, paid the fees for surveying, made the necessary advances for perfecting the title by patent. Some time after which settlement, their said ancestor, not satisfied with the situation of said tract, proposed to Governor Gayoso, to relinquish said tract of land, on express condition that he should receive in exchange therefor another tract equal in value, which he might select. But the said government, without complying with the said condition, from a personal dislike to their said ancestor, offered his said tract of land to one James Mather, to whom it was immediately afterwards, in 1794, granted, and who took possession of the same, together with farming utensils and crop of corn then growing; against which arbitrary conduct of the said governor, and fraudulent practice of said James, their said ancestor then protested as unjust and unlawful.

That the said James Mather, who had a perfect knowledge of the title of said ancestor of complainants to the said tract of land, obtained a grant therefor, entirely through the influence of said title, and the false and fraudulent representations of William Dunbar and other officers of the Spanish Government, who were urged and excited thereto by the said James Mather; in part evidence whereof, complainants have now in possession a memorandum, in the handwriting of the said William Dunbar, at the foot of the original warrant or order of survey, purporting to be a sale and release of the said 2,000 acres to the said William Dunbar, and to have been subscribed by the said ancestor of complainants. The said warrant or order of survey had been in the possession of the said William Dunbar, when delivered to the said R. Stark, which was after the grant of Mather. It had the memorandum mentioned, but so obliterated, apparently by design, as to be but partially legible.

The bill further states, that according to the laws, usages, and customs of the Spanish Government, a Spanish warrant or order of survey was considered as equivalent to a complete grant, by which, on fulfilment of the condition imposed, a fee simple passed to warrantee, and that the governor never regranted the land so conveyed, unless the same became forfeited to the crown, or by consent of the first grantee; and in later days, the Spanish Government was not in the habit of exacting from their grantees, many of the conditions to the early grants, and no transfers of rights thus acquired were valid, unless the same were in writing and duly recorded.

They deny that their ancestor ever committed any act by which a forfeiture of his right to the said tract of land resulted to the government, or ever disposed of the same to any person, or gave his consent, either verbally or in writing, to the proper authorities to regrant the same, but that by confederation, and the said James Mather obtained and keeps possession of the same, and refuses to account for the corn and implements of husbandry acquired therewith; the prayer is for a surrender of the land, its titles, peaceable possession thereof, and general relief.

The answer of James Mather admits the acquisition of the order of survey, its execution, and possession of the ceded premises under it, by ancestor of complainants, but denies his having made either costly or extensive improvements thereon, and professes ignorance as to the fees paid for said survey, and moneys advanced for perfecting title.

Alleges that some time in 1792, respondent desiring to acquire a tract of land in the Natchez [district,] made application to Governor Gayoso, then governor of said district, who informed him that the tract of land now in question was vacant, and that the concession would be made to him on his petition therefor. Respondent having understood that R. Stark, the ancestor of the complainants, had resided on said tract for a short time, inquired of the said governor if he had no claim thereto, or expectation of holding it, when the said governor informed respondent that he, the said R. Stark, had abandoned and given up his claim thereto. Respondent inquired of the said R. Stark, being at the house of the governor at that time, if he had any claim to the said tract of land, who answered in the negative—that he had abandoned it, and would quit the country; that he was at full liberty to apply therefor. Whereupon, defendant petitioned for said tract of land, and obtained an order of survey therefor, from the governor of the Province of Louisiana, dated 7th of February, 1793, and that the same was actually surveyed by William Dunbar, deputy surveyor, on the 20th of July, in the same year, and defendant invested with possession; and about the 3d of April, 1794, a patent issued for the said premises to respondent, under the seal of the governor of the said province, to whom the granting of land therein pertained. That during the whole of this time, while respondent was perfecting his titles aforesaid, the said R. Stark, the ancestor of complainants, made no claim or pretence of claim to the same. That at the time of purchasing said title to the said tract of land, this respondent had no notice of any other claim thereto, but was assured by the said R. Stark that he had none, on which the respondent insists the same as if it was pleaded.

Respondent further answering, denies, that when the said R. Stark relinquished and abandoned his claim as aforesaid, he made any reservations or conditions with the governor, commandant of said district of Natchez, by which he was to have other lands in lieu of those thus abandoned, but the said abandonment was for the

purpose of quitting the country, which the said R. Stark did do immediately thereafter, without having made any application for other lands in the Spanish dominions. And respondent believes, that when the said R. Stark thus abandoned his lands and the Spanish country, the said warrant or order of survey was left in the hands of the said deputy surveyor, and did not again come into possession of the said R. Stark until his return to the country, of a change of governments; after which, the said R. Stark instituted his action of ejectment against [the] tenant of the respondent, in the district court for the district of Adams, to which action defendants made defence, and permitted the same R. Stark to give all matters in evidence, as well in parol as in deed, touching his said title; and after full examination, both legal and equitable, of both parties, a verdict was rendered for defendant. Denies taking possession of crop or any other property of said R. Stark. Denies all collusion with said William Dunbar, nor does he believe the said William ever practised any fraud or designs against the said R. Stark in relation to said tract of land.

That on the 26th April, 1803, respondent sold and conveyed said tract of land, in fee simple, to George Mather, now deceased, for full consideration paid him, in money and in services, by the said George in his lifetime. That this defendant and the said George, in his lifetime, and those claiming under him since his death, have been in possession of said premises more than twenty years, occupying, cultivating, and improving the same, on which he insists as if pleaded. Denies all fraud, combination, &c.

The amended bill charges, that George Mather, junior, who is now made party defendant, pretends that James Mather, father of said George, conveyed the said premises to George Mather, senior, brother of him, the said James, and that he, the said George, senior, devised to the said George, junior, his nephew. But they expressly charge, that if such conveyance was made, the same is in fraud of complainants, for they say it was a matter of public notoriety, not only in the family of the said Mather, but also in the neighborhood, that the said R. Stark, the ancestor of the complainants, in his lifetime, and his heirs since his death, claimed title to the said tract of land, of which the said George Mather, senior, the brother of the said James, and the said George, junior, another defendant, had notice before any conveyance or devise as is pre tended to have been made, if ever made.

Prayer as in original, and conveyance from the said George Mather, junior, to the complainants of the said premises, and for general relief.

The plea of George Mather states, that the plea of George Mather, senior, was a purchaser, for valuable consideration, of his brother James, without notice, and devised the said premises to him, the said George Mather, junior, defendant.

Whereupon, it appearing that the equitable title of complainants to said tract of land, had not been in issue on the trial at law, and

that their only remedy was in this court; and it further appearing to the court, on the examinations of the depositions, and by verdict of the jury, that complainants' ancestor never abandoned or surrendered his claim to the said tract of land, or by any act of commission or omission forfeited his title, as pretended by defendants' answer; and it further appearing to the court, that the title of the defendant was obtained by fraud, force, and violence, against the equity of complainants' ancestor; and it further appearing to the court, that the statements in the bill of complainants are true, and that the plea of George Mather is untrue, and the court being satisfied with the verdict of the jury, it is therefore ordered, adjudged, and decreed, that the title of defendants to said tract of land be, and the same is hereby, declared to be fraudulent and void as against complainants. It is further ordered, adjudged, and decreed, that the defendants, respectively, within sixty days after the decree, under the direction of the clerk of this court, by good and sufficient deeds of conveyance, containing apt covenants against their several acts and deeds, release and convey to the complainants, their heirs and assigns forever, all their respective rights, title, claim, and demand to the said tract of land, with the hereditaments and appurtenances to the same belonging; and that they also, in the same time, deliver to complainants, the full, and peaceable, and actual possession of said tract of land, and that a writ of *habere facias possessionem* be awarded in favor of complainants against the defendants, for the same; not to issue, however, until after ten days from the adjournment of the court, and that defendants pay to complainants their costs, to be taxed in this suit, and complainants have execution therefor.

The defendants conceiving themselves aggrieved by the judgment and decree of the court aforesaid, presented their petition for a writ of error, which is as follows, to wit:

To the honorable John P. Hampton, chief justice of the supreme court of the State of Mississippi:

The petition of George Mather and others, heirs-at-law of James Mather, deceased, respectfully represents, that during the present term of the supreme court, a suit in chancery, referred to the said supreme court for its decision, wherein Robert Stark's heirs were complainants, and George Mather, and the heirs of James Mather, deceased, were defendants, came on to be heard, and after a re-argument of the case, the said supreme court pronounced a decree therein, in favor of the said complainants and against the said defendants, which said decree has been duly signed and enrolled among the records of said court.

Your petitioners would further state, that the claim of their said ancestor, James Mather, deceased, arose under the articles of agreement and cession between the United States and the State of Georgia, and that by the said decree the title so derived has been overruled,

and in effect abrogated, and that under such circumstances, the jurisdiction of the United States attaches to the case, and a writ of error lies to the Supreme Court of the United States, to reverse the decision or decree as aforesaid, it having been pronounced by the highest court of law and equity in the State of Mississippi.

They further represent, that they are advised that there is manifest error in the proceedings had in the said case, as also in the said decree therein pronounced, and that they are desirous of removing the same under the act of Congress, by writ of error to the Supreme Court of the United States, in order that the errors, if any, in the said proceedings and decree may be reversed and corrected; they therefore pray your honor, under a provision of an act of Congress, in such case made and provided, to award a writ of error in the case, to operate as a supersedeas, upon bond and security being given as the law directs.

And they, as in duty bound, will ever pray.

GEORGE MATHER AND OTHERS,
By THOMAS B. REID, *their Attorney.*

Fiat.

Let a writ of error issue as prayed for, upon said petitioners executing bond in the penal sum of three thousand dollars, with James and Robert Moore their securities, conditioned according to an act of Congress in such case made and provided.

JNO. P. HAMPTON.

To HOWELL MOSS, esq.,
Clerk of the Supreme Court of the State of Mississippi.
NATCHEZ, *Jan.* 22, 1825.

Whereupon, the defendants filed their powers of attorney to Philip Hickey, for the purpose of entering into bond, which follows in the words, to wit:

UNITED STATES OF AMERICA, *State of Louisiana:*

Know all men by these presents, that on the 25th day of January, in the year one thousand eight hundred and twenty-five, before me, Francis Gordon, notary public in and for the parish of East Baton Rouge, duly commissioned, and by law authorized to receive proof of, and acknowledgment of, letters of attorney, and in the presence of the witnesses hereafter named, personally came and appeared William Wykoff, senior, and Elizabeth his wife, late Elizabeth Mather, Anna Hickey, late Anna Mather, and Frances G. Duncan, late Frances G. Mather, the said Elizabeth, Frances, and Anna, being children and legal heirs and representatives of James Mather, late of this parish and State, deceased, who declared to have made, ordained, and nominated, and appointed, and by these presents do make, ordain, nominate, and appoint, and in their place and stead put and depute, Philip Hickey, esq., of this

parish, their true and lawful attorney, giving, and by these presents granting, unto their said attorney, full power and lawful authority for them, the said constituents, in their names, and to their use and behalf, to sue out a writ of error to the Supreme Court of the United States of America, on a certain final decree pronounced by the court of chancery of the State of Mississippi, in a case lately pending before said court, in which the heirs of Stark are complainants, and the constituents defendants; and also to make, sign, or execute all such bond or bonds, for the prosecution of said writ of error to final judgment, and also for the security of costs as shall be necessary for prosecuting the same, and generally, in the premises to do, and execute, and perform all and whatsoever shall be requisite and necessary in the premises, in as full and ample a manner, to all intents and purposes, as they, the said constituents, might and could do if personally present; also with power of substitution and revocation; they, the said constituents, hereby promising to ratify and hold for firm and valid, all and whatsoever their said attorney shall lawfully do in the premises.

In testimony whereof, I, the said notary, have hereunto set my hand and seal of office.

The parties signing their names within the presence of James Mather and Jonathan H. Chesley.

(Signed) WILLIAM WYKOFF, Senior.
ELIZA WYKOFF,
ANNA HICKEY,
FRANCES G. DUNCAN.

JAMES MATHER,
J. H. CHESLEY.

F. GORDON, *Not. Public.*

STATE OF LOUISIANA, *city of New Orleans.*

By this instrument of procuration be it known, that on this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and twenty-five, and the forty-ninth of the independence of the United States of America, before me, Hugh K. Gordon, notary public in and for the parish of New Orleans, duly commissioned and sworn, personally came and appeared George Mather, of the parish of Saint James, of the State of Louisiana, planter, one of the heirs of the late James Mather, of the said James Mather, of the State of Louisiana, deceased, who declared, that he has made and appointed, and does by these presents make, constitute, and appoint, and in his place and stead depute and put Philip Hickey, of Baton Rouge, in this State, to be his true and lawful attorney in fact, granting unto the said attorney full power and authority, for him, in his name, or otherwise for his use, to pursue and prosecute a writ of error, to sign a writ of error bond, and to do and perform all and whatsoever shall and may be required and necessary, in and to the prosecution of the case or suit of the heirs of

Stark vs. the said James Mather, deceased, lately pending in the supreme court of the State of Mississippi, sitting in the city of Natchez, and where the said case was decided against the said heirs of Mather, and to sign all petitions and instruments of writing, and to do and perform all matters and things requisite and necessary in and concerning the premises, as fully and effectually, to all intents and purposes, as he, this constituent, could or might do if personally present at the doing thereof; hereby ratifying all and whatsoever the said attorney shall lawfully do by virtue of this act of procuration.

This done and passed at New Orleans aforesaid, in presence of John Peterkin and John Stringer, both of said city, who hereunto subscribe their names as such, with the appowery and me, the notary, who grant these presents under my signature and seal of office.

GEORGE MATHER.

JOHN PETERKIN,
J. STRINGER.

HU. K. GORDON. [L. S.]

UNITED STATES OF AMERICA,
State of Louisiana:

By Henry Johnson, Governor of the State of Louisiana.

These are to certify that Hu. K. Gordon, whose name is subscribed to the instrument of writing hereto annexed, was at the time of the signing the same, and is now, notary public in and for the city and parish of New Orleans, duly qualified and commissioned.

[L. S.] Given at New Orleans, under my hand and the seal of the State, this twenty-eighth day of January, one thousand eight hundred and twenty-five, and of the independence of the United States the forty-ninth.

H. JOHNSON.

Whereupon, the said plaintiffs in error, by their attorney aforesaid, entered into bond, of which the following is a copy:

STATE OF MISSISSIPPI:

Know all men by these presents, that we, Philip Hickey, George Mather, William Wykoff, senior, Eliza Wykoff, Anna Hickey, and Frances S. Duncan, heirs and legal representatives of James Mather, deceased, and James Moore and Robert Moore, are held and firmly bound unto Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Mary Stark, Sophia Gildart, and Elizabeth Stark, Thomas F. Willison, James Dillet, and Harriet his wife, late Harriet Willison, heirs and legal representatives of Robert Stark, deceased, in the sum of three thousand dollars, to be paid to the said Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Sophia Gildart, Elizabeth Stark, Thomas Willison, James Dillet, and Harriet his wife, their heirs, executors, administrators,

and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators firmly by these presents. Sealed with our seals, and dated this thirty-first day of January, eighteen hundred and twenty-five.

The condition of the above obligation is such, that whereas, at a term of the supreme court of the State of Mississippi, in chancery sitting, a judgment or decree was entered by said court in favor of the said Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Sophia Gildart, Elizabeth Stark, Thomas T. Willison, and James Dillet, and Harriet his wife, and against the said Philip Hickey, George Mather, William Wykoff, senior, Eliza Wykoff, and Anna Hickey, and Francis G. Duncan. And the said Philip Hickey, George Mather, William Wykoff, senior, Eliza Wykoff, and Anna Hickey, and Francis G. Duncan conceiving themselves aggrieved by said judgment or decree, have prayed and sued out of the said supreme court a writ of error to the Supreme Court of the United States, requiring the clerk of the said supreme court of the State of Mississippi, in chancery, to certify and bring up the record and proceedings of the said suit lately pending therein, wherein the heirs of Stark, aforesaid, are complainants, and the heirs and legal representatives of James Mather, deceased, are defendants, that the said Supreme Court of the United States may cause forthwith to be done in the premises what of right ought to be done.

Now, if the said Philip Hickey, George Mather, William Wykoff, senior, Eliza Wykoff, Anna Hickey, and Francis G. Duncan shall prosecute their writ of error with effect, and shall well and truly pay and satisfy all such damages, interest, and costs, as the said Supreme Court of the United States shall award in the premises, then the above obligation is to be void, otherwise to remain in full force and virtue.

PHILIP HICKEY, for himself, and attorney in fact for [SEAL.]
WILLIAM WYKOFF, senior, [SEAL.]
ELIZA WYKOFF, [SEAL.]
ANNA HICKEY, [SEAL.]
F. G. DUNCAN, [SEAL.]
GEORGE MATHER, [SEAL.]
JAMES MOORE, [SEAL.]
ROBERT MOORE. [SEAL.]

Signed, sealed, and delivered in the presence of
HOWELL MOSS.

Whereupon, the following writ of error was issued, to wit:

UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the supreme court of the State of Mississippi, greeting:

Because in the record and proceedings, as also the rendition of the judgment of a plea, which is in the said supreme court before

you, or some of you, between Alexander B. Stark, Theodore Stark, Horatio Stark, Mary Wormley, Mary Stark, Sophia Gildart, Elizabeth Stark, Thomas T. Willison, and Harriet his wife, late Harriet Willison, heirs and representatives of Robert Stark, deceased, complainants, and Philip Hickey, George Mather, William Wykoff, senior, Elizabeth Wykoff, Anna Hickey, and Francis G. Duncan, heirs and legal representatives of James Mather, deceased, defendants, a manifest error hath happened, to the great damage of the said Philip Hickey, George Mather, William Wykoff, senior, Elizabeth Wykoff, Anna Hickey, and Francis G. Duncan, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seals, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington city on the first Monday of February next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to law and custom of the United States should be done.

Witness the honorable John Marshall, chief justice of the said Supreme Court, at the city of Washington, on the

[L. S.] Monday , in the year of our Lord eighteen hundred and , and 49 of American independence.

HOWELL MOSS, *Clerk.*

Issued 7th December, 1825.

Whereupon the following citation was issued:

THE STATE OF MISSISSIPPI, *supreme court:*

R. STARK's heirs, complainants,
vs.
JAMES MATHER's representatives, defendants. } In chancery.

Decree for complainants, December term, 1824.

To the complainants, or their attorney.

Take notice, that the defendants in the above case have sued out and obtained a writ of error to the Supreme Court of the United States, returnable at Washington city on the first Monday in February next, at which time and place you are hereby cited to appear and show cause, if any you can, why the judgment or decree of the said supreme court of the state of Mississippi should not be reversed, for the errors then and there to be assigned.

JNO. P. HAMPDEN,
Presiding Judge, &c.

Issued 7th December, 1825.

Acknowledged service of the above for myself and the other heirs.

THEODORE STARK.

The above acknowledgment was taken and made in my presence this 7th December, 1825.

HOWELL MOSS, *Clerk.*

The evidence read in the foregoing case is as follows, to wit:

Moses Johnson's deposition.

Int. 1st. Did you know the said Robert Stark in his lifetime? If so, at what time and how long did you know him?

Answer. That he was acquainted with the late Robert Stark, deceased. He became acquainted with him at a place called the Ridge, in South Carolina, about the year seventeen hundred and eighty-two, from which place this deponent and the late Robert came in company to the Mississippi Territory, and that he remained in his employment upwards of four years.

2d. Have you any knowledge of the said Robert Stark holding and possessing a tract of land lying on the Bayou Sarah creek, in the Mississippi Territory, containing 2,000 acres, or thereabouts, under a grant under the Spanish Government?

Answer. That he knew that the said late Robert Stark held and possessed a tract of land lying on the Bayou Sarah creek, in the Mississippi Territory, containing 2,000 acres, or thereabouts, under a grant of the Spanish Government.

3d. How long did the said Robert Stark occupy and cultivate the said tract of land; and did you, or did you not, superintend the same for him? If yea, at what time, how long, how many acres were cultivated, and how many crops were made thereon?

Answer. That the said late Robert Stark occupied and cultivated this said tract of land three years; that this deponent superintended the clearing and cultivation for him, as the said late Robert Stark, upon his arrival in the said Territory, put ten of his slaves under the direction of this deponent, who took them to the said tract of land, where they remained three years, and with whom this deponent made three crops. There was, as well as this deponent can at this distance of time recollect, between thirty-five and forty acres enclosed with a good fence and under cultivation for the two last years.

4th. Was or was not the said tract of land surveyed for the said Robert Stark by William Atchison, deputy surveyor under the Spanish Government? and if so, about what time was said survey made? Have you any knowledge of the said James Mather having gotten possession of the said tract of land at any time since?

Answer. That he knew that the said tract of land was surveyed for the late Robert, by William Atchison, or a deputy surveyor under the Spanish Government, some time during the first year that

this deponent resided on said tract, the year seventeen hundred and ninety-one or ninety-two, and after some improvement was made, as he, this deponent, was one of the chain carriers. He also says that after he left the said Territory, he went and lived about four years within about six miles of the said tract, and often went to the said place. That immediately after he left it George Mather sent two men to take possession of it, and took at the same time possession of about three hundred bushels of corn, which they consumed, that this deponent left on the place in cribs. He knows that those two men were sent there by the said Mather, as they told this deponent so; and *as* he knows that said Mather furnished them with meat, horses, and farming utensils.

5th. Do you know any thing further material to the complainants in this cause? If so, set forth the same particularly and at large.

Answer. That he and one Spon were employed by the said late Robert Stark to explore these parts of the country in which the said tract of land is situated; that the said land was the first that was improved in that part of the country, and that it was settled at a considerable expense to the said late Robert, as it was at least twenty miles from every other settlement, and every article necessary for the establishment was at the time difficult to obtain, and very dear; and further this deponent saith not.

Moses Johnson's deposition, No. 2.

Interrogatory 1st. Did you know the said Robert Stark in his lifetime? and if so *and if so*, at what time and how long did you know him?

Answer. That he was well acquainted with the late Robert Stark; that he became acquainted with him at a place called the Ridge, in South Carolina, about the year 1788, '89, or '90, from which place this deponent and the said Robert came in company to the Mississippi Territory; that upon their arriving this deponent took charge of ten of the said late Robert Stark's slaves, in the character of overseer, in which capacity he served the said Robert for four years.

2d. Have you any knowledge of the said Robert Stark holding and possessing a certain tract of land lying on the Bayou Sarah creek, in the Mississippi Territory, containing two thousand acres of land, or thereabouts, under a grant under the Spanish Government?

Answer. That he does know that the said late Robert Stark, deceased, did hold and possess a tract of land lying on the Bayou Sarah creek, in the Mississippi Territory, containing 2,000 acres, or thereabouts, for which the deponent understood and believes the said Robert Stark had a grant from the Spanish Government.

3d. How long did the said Robert Stark occupy and cultivate the said tract of land? and did you or did you not superintend the

same for him? If so, say at what time, how long, how many acres were cleared, and how many crops were made thereon?

Answer. That the said late Robert Stark occupied and cultivated the said tract of land for three years. That this deponent having been employed as an overseer, and ten of the said late Robert Stark's slaves committed to his charge, he superintended the clearing and cultivation of the said tract of land for the said Stark during that time. That there was, as well as this deponent can recollect at this distant date, between twenty-five and fifty acres of the land cleared and enclosed under good fence, and cultivated the two last years.

4th. Was or was not the said tract of land surveyed for the said Robert Stark, by William Atchison, deputy surveyor under the Spanish Government, some time in the first part of the year that the deponent resided on the said tract of land, and after some improvements had been made?

Answer. He thinks in the year 1791 or 1792, as he, this deponent, was one of the chain carriers. The deponent further saith, that after leaving the said tract of land, his residence for the next four years [was] within about six miles of the said tract, and being in the neighborhood frequently visited the said tract of land; that after he had left the said place, James Mather sent two men to take possession of it, who also took possession of, and used, about three hundred barrels of corn, which this deponent left on the place in cribs. The deponent knows that these men were sent by the said James Mather, as they told this deponent so; and *as* he knows that the said Mather furnished them with meat, horses, and farming utensils.

5th. Do you know any thing further material to the complainants in this cause? If so, set forth the same particularly and at large.

Answer. That he and one Eplan were employed by the said late Robert Stark to explore that part of the country in which the said tract of land is situated; that the said tract is the first that was settled in that part of the country, and it was settled at a considerable expense to the said late Robert Stark, as it was at least twenty miles from any other settlement, and every article necessary for the establishment was at that time procured with difficulty and at high prices.

Cross interrogatories.

Interrogatory 1st. If you know the said Robert Stark mentioned in complainants' interrogatories, when and at what time did he first come into the district of Natchez, or rather the jurisdiction of the Spanish Government? How long did he remain in said district, and when and at what time did he return to the country under the jurisdiction of the United States?

Answer. That he cannot be particular as to the year in which the late Robert Stark removed to the Mississippi Territory, but to the best of his knowledge it was in the winter of the year 1788, '89, or '90. That the said Stark, when he first arrived in the district of Natchez, rented a plantation on Cole's creek, where he resided and made several crops, the deponent superintending for him the first year; after which this deponent returned to Carolina and attended the wife and the rest of the white family of the said Stark to the district of Natchez; and soon after the deponent's second arrival in said district, went down in company with the said Stark and took possession of the plantation on Bayou Sarah creek. The deponent further saith, that he cannot distinctly recollect the date at which the said late Robert Stark removed from the district of Natchez, but to the best of his recollection it was in the year 1797 or 1798; that the said Stark sold his negroes, and vested their proceeds in cotton, which he shipped to some port of the United States, and went himself by land. That the wife of the said Robert Stark and his daughter returned to the United States in the vessel in which the cotton was transported, as this deponent understood, but that their two sons, Theodore and Horatio, remained in the district of Natchez.

Interrogatory 2d. If you know any thing of the said Robert Stark holding the said tract of land mentioned in complainants' interrogatories, under a grant from the Spanish Government, state what kind or description of grant, by whom signed or issued, and whether, when and where, you ever saw such grant, and what was the purport thereof?

Answer. That of the grant from the Spanish Government to the said Robert Stark he speaks only from information. That the said Stark informed this deponent he had a grant from the Spanish Government for the said tract of land; and that he knew there was an intimacy between the said Stark and the late Governor Gayoso. The deponent has reason to believe a grant was obtained, but of what nature or description the deponent cannot say, as he does not recollect to have seen it.

Interrogatory 3d. How long was the said Robert Stark in possession of the said tract of land, and for what reason did he abandon the same? Did he ever inform you that he intended to abandon said tract of land? or what did he inform you, or others in your hearing, on this subject?

Answer. That he did not recollect ever to have heard the said Robert Stark give any reason for removing his negroes from the plantation in question, nor does he know that he intended finally to abandon it.

Interrogatory 4th. Did not the said Robert Stark abandon said tract of land and leave the country? and at what time?

Answer. That he has replied as fully on this interrogatory as it was in his power to do, in his answer to the *first* and *third* cross interrogatories. And further this deponent saith not.

Moses Johnson's deposition, No. 3.

Interrogatory 1st. Do you remember the precise time when you quitted the plantation in dispute between the plaintiffs and defendants? Was it or was it not some months before you ever saw James Mather?

Answer. That as far as he can recollect your deponent quitted the plantation in April, about the year 1793; and that it was before he left the plantation this deponent saw and conversed with Mr. Mather, defendant, at his, the deponent's house; and that this was the only time he ever saw the defendant to the best of his recollection.

Interrogatory 2d. Do you know why Colonel Stark left said plantation? was it or was it not on account of some difference that had arisen between him, the said Stark, and Governor Gayoso, occasioned by the complaint of a person who considered himself ill used by the said Colonel Stark?

Answer. That there did arise a difference between Colonel Robert Stark, the complainants' father, and Governor Gayoso, and he believes it originated from the complaint of an individual, and this was the reason why Colonel Stark abandoned the plantation.

Interrogatory 3d. Had or had not the said Colonel Stark been appointed by Governor Gayoso a syndic or justice of the peace for the district in which he resided, with power to take cognizance of any matters in dispute between the inhabitants in said district? and was not the dispute between the Governor and Colonel Stark occasioned by some improper conduct in office of the said Stark, and was or was not this the cause why said Stark abandoned the settlement and took off his negroes and cattle? and was it or was it not at the time that you quitted the said plantation?

Answer. That he had no knowledge that Colonel Stark ever held any office under the Spanish Government.

Interrogatory 4th. Do you or do you not recollect a conversation that took place between yourself and James Mather, after the arrival of the said James Mather at Natchez? and did not the said James [Mather] tell you, that on his way up he had been informed that Colonel Stark had abandoned said plantation or tract of land, and that he, James Mather, had been advised to ask for a grant of the same land, it being then vacant? and did or did not the said James Mather say to you that he intended to ask it of the Government, but he would not if Colonel Stark still chose to hold it? and did or did not the said James Mather request you to convey this communication to said Stark?

Answer. That he can answer nothing, as he has no recollection of any circumstance therein contained.

Interrogatory 5th. Did or did you not communicate with the said Stark on the subject of his still wishing to hold said land, and did or did you not bring for answer that James Mather might ask for

the land, as Stark had abandoned the same, and would not live under the laws of the country (meaning the Spanish laws) for all the land in it? State particularly what said Stark replied to you, and what you said to said Mather.

Answer. That he had conversed with said Colonel Stark after he had abandoned said plantation, and desired said Stark to surrender [it] to him, and said Colonel Stark refused to substitute him in his right and interest in said land, and declares that said Stark said he was determined not to live under the Spanish Government, and moved his family out of the limits and control of said Government.

Interrogatory . Did you or did you not at the same time, or shortly after, apply to the said Mather for a part of the same tract? State all you know relative to the before mentioned tract of land beneficial to the said Mather.

Answer. That he never applied, as well as he can recollect, to the defendant, Mather, for a part of the tract of land; and this is all the information he is possessed of that could at all assist either of the parties in this suit, but what is already disclosed in his several depositions on the part of plaintiffs and defendants.

Matthew McCullock's deposition.

That some time in the summer of the year 1794 he was present, in company with Governor Gayoso, Colonel Robert Stark, and James Mather, at the Government house in Natchez, when a conversation happened between said Gayoso and said Colonel Stark, in presence of the deponent and the said James Mather, about land; in which conversation Colonel Stark said to Governor Gayoso that he would give up his settlement on a tract of land on the waters of Bayou Sarah, in the present county of Wilkinson, provided he, the said Governor, would give him another tract of land in the same neighborhood which he had found; after a pause of a minute, perhaps, the Governor turned round to said Mather, and said that as he, Mather, had been applying for land, this was a fine tract and he might have it, alluding to the tract which Colonel Stark proposed to exchange; whereupon, the said Colonel Stark said, Governor observe I do not mean to relinquish my settlement, unless you give me the land which I have found first. The Governor then said to Colonel Stark that he was a discontented old man. Colonel Stark then spoke to the said James Mather, and told him he had better look out for another place or tract of land, as he should not give up his said claim. Mr. Mather made no reply, but shrugged up his shoulders.

The deponent further saith, that at the time of said conversation said Colonel Robert Stark had been some years in possession of the land in question, and had made thereon considerable improvements, several cabins and about forty or fifty acres of cleared land, and continued in possession until it appeared he was driven off.

Matthew McCullock's deposition, No. 2.

That some time in the summer of the year 1792, as he believes, he was present, in company with Governor Gayoso, Colonel Robert Stark, and James Mather, at the Government house at Natchez. In a conversation which happened between said Governor Gayoso and Robert Stark, in presence of deponent and said James Mather, about land; in which conversation said Colonel Stark said to the said Gayoso, that he would give up his settlement on a tract of land on the waters of the Bayou Sara, in the present county of Wilkinson, provided the said Governor would give him another tract of land in the same neighborhood which he had found. After a pause of a minute, perhaps, the Governor turned round toward the said James Mather, and said that as he, Mather, had been applying for land, this was a fine tract and he might have it, alluding to the tract which Colonel Stark proposed to exchange; whereupon, the said Colonel Stark said "Governor observe I do not mean to relinquish my claim and settlement unless you give me the land I have found." The Governor then said to Colonel Stark, he was a discontented old man. Colonel Stark then spoke to James Mather, and told him he had better look for another place or tract of land, as he should not give up his said claim. Mr. Mather made no reply, but shrugged up his shoulders.

The deponent further says, that at the time of the said conversation said Colonel Stark had been some years in possession of the land in question, and made thereon considerable improvements—several cabins, and cleared about forty or fifty acres of land, and continued in possession until it appeared he was driven off.

Ebenr. Rees' deposition.

That he knew the defendants upwards of twenty years, and that he well knew the said James and George Mather were connected in business. That George Mather was at Natchez previous to April, 1803, and heard him in conversation with the late William Dunbar, deceased, on the subject of the land in question, and in that conversation, it appeared that he was acting as agent of James Mather, one of the defendants, and that George Mather mentioned the law suit which was then pending or before tried.

And the deponent further saith, that he heard the said George Mather say, that the said tract of land now in controversy was granted to his brother James, and that the said Colonel Robert Stark did not approve of the transaction, and that he deemed it an arbitrary and unjust act in the governor to deprive him of lands on which he was urged and solicited to accept, and in all respects complied with the true intent and meaning of the law and usages of the Spanish Government.

John Hart's deposition.

Interrogatory 1st. Are you acquainted with the parties, complainants, to wit, Theodore Stark and others, and the defendant James Mather, of the State of Louisiana?

Answer. I know Theodore Stark, and have some acquaintance with Mr. Mather, but do not recollect his given name.

Interrogatory 2d. Had you or had you not some conversation with James Mather, about the year 1793, relative to a tract of land situated in Wilkinson county, on the Bayou Sara, which he, the said James, informed you he was endeavoring to procure from Governor Gayoso and the Spanish Government?

Answer. Yes, I had [a conversation] with a Mr. Mather, believed to be James Mather.

Interrogatory 3d. Did not said Mather call at some house on his way up and down to Natchez, at the period he said he was applying for said tract of land?

Answer. Mr. Mather called at my house on his way to his plantation.

Interrogatory 4th. Did he not inform you that Colonel Robert Stark claimed the said tract by a previous concession from the Spanish Government?

Answer. He did.

Interrogatory 5th. Did he not confess that the said Colonel Robert Stark persisted in adhering implicitly to his claim to said tract, and that he, the said James, and Col. had a serious quarrel about the matter?

Answer. Yes, he did.

Interrogatory 6th. State all and every circumstance that the said James Mather told you about the subject, and relative to what he admitted had occurred in the progress of his applying for the land?

Answer. Mr. Mather told me that when he applied to the Spanish governor for a tract of land, the Spanish governor then presented and offered him said tract of land, as one that had been given up by Colonel Stark. But when Mather called upon Colonel Stark, he refused to give up the titles to the said tract of land; and also George Mather always blamed the Spanish governor, Gayoso, for offering a tract of land that had been granted to Colonel Stark.

Cross interrogatories.

Interrogatory 1st. If you had any conversation with James Mather respecting the tract of land in controversy, did not the said James Mather inform you that Colonel Stark had abandoned said tract of land, with a determination to quit the government and country? And what further did the said James Mather inform you on that head?

Answer. That Mr. Mather told me that the Spanish governor informed him that Colonel Stark had abandoned said tract of land.

Interrogatory 2d. At what time did the said Robert Stark come into the Spanish Government; and when and how long did he occupy the land in question; and when did he abandon or give up the land in question; and when did he leave the country; and when did he return?

Answer. I know nothing about it.

Interrogatory 3d. What reason did the said Robert Stark assign for abandoning said tract of land, and leaving the Spanish government?

Answer. I don't know.

Interrogatory 4th. How long has said Mather, and those claiming under him, been in possession of said tract of land?

Answer. I don't know.

Interrogatory 5th. Did not said Colonel Stark frequently declare that he had abandoned said tract of land and should quit the country; or what other were his declarations on that subject?

Answer. No, I never heard him declare any thing on the subject.

Interrogatory 6th. At what time did the said Colonel Stark return to the country under the American Government, and how long was he absent therefrom?

Answer. I can't tell, having no knowledge of it.

Interrogatory 7th. What further do you know favorable to the claim of the defendants?

Answer. I know nothing else favorable to the claim of the defendants.

James Williams' deposition.

Interrogatory 1st. Do you know the complainants and defendants in the above case, and [did] you know Robert Stark the elder, and George Mather, brother of said James Mather, in his lifetime?

Answer. I knew Robert Stark, and James Mather, and George Mather the elder.

Interrogatory 2d. Were you in the employment of the said James Mather some years since, as an overseer or superintendent of his plantation and negroes, on the land now in controversy between the parties, lying on the Bayou Sara, and containing 2,000 arpens?

Answer. Deponent says he was.

Interrogatory 3d. Had you a conversation with the said James Mather, during the time you were in his employment, or at any other time, respecting the said tract of land, which was claimed by the said Robert Stark the elder? If so, did or did not the said James Mather say, that the reason that he, Mather, did not proceed to make an extensive improvement thereon was, that the said Robert Stark had a claim to the said tract of land, and that he, Mather, expected it would be recovered from him by the said Stark, or words to that effect? State fully, and all that passed between you in that conversation, and say about what time it took place.

Answer. About the 3d of December, 1795, I took possession of the tract of land now in dispute, for James Mather, and in the course of the year had a conversation with James Mather respecting the title to this land, wherein he said, as nearly as I can recollect, as follows, that he had gone to Natchez some time before, and hearing of the fertility of the Bayou Sara lands, he (the said James Mather) applied for some to Governor Gayoso, the Governor told him, "here is a tract of land that has just been given up by Mr. Stark, from character it is one of the finest on Bayou Sara, you had better take it." Mr. Mather agreed to take it. After receiving it, he became doubtful of the title, and requested the Governor to oblige Mr. Stark to give up the *requete* and survey of said tract; the Governor called upon Mr. Stark to do so, who refused.

Interrogatory 4th. Was George Mather the elder, the brother of said James, present at the above conversation, or at any other time when the said Robert Stark's claim was spoken of in your presence?

Answer. I believe he was not present, but I afterwards had a conversation with George Mather himself, as follows, who said he had become the proprietor of the 2,000 arpents, that they had had one suit, and that the decision of it had been in his favor, and that he did not regard the claim of Stark.

Interrogatory 5th. Do you know any thing more material to the complainants in the above cause? If so, state it fully and at large.

Answer. I do not recollect any other circumstances other than this, that when I took possession of it, as stated above, the land appeared to have been cultivated, and about two crops made, and they were said, by Mr. James Mather, to have been made by Col. Stark.

James Williams' deposition, No. 2.

Interrogatory 1st. Do you know complainants and defendants in the above cause, and did you know Robert Stark and George Mather, brother of said James Mather, in their lifetime?

Answer. I know Bolery Stark, Robert Stark, Theodore Stark, and knew Robert Stark the elder, in his lifetime; I knew George Mather the elder, and know James Mather and George Mather the younger.

Interrogatory 2d. Were you in the employ of the said James Mather some years since, as an overseer or superintendent of the plantation and negroes, on the land now in controversy?

Answer. I was.

Interrogatory 3d. Had you a conversation with the said James Mather, during the time you were in his employ, or at any other time, respecting the said tract of land, which was claimed by Robert Stark the elder? If so, did or did not the said James Mather say, that the reason that he, Mather, did not proceed to make an extensive improvement thereon was, that the said Robert Stark the elder had a claim to the said tract of land, and that he, Mather, expected

it would be recovered from him by said Stark, or words to that effect? State fully all that passed between you in that conversation; say about what time it took place.

Answer. About the 3d December, in the year 1795, I took possession of the tract of land now in dispute, as overseer for James Mather; and in the course of the year following, I had a conversation with James Mather respecting the title to this land, wherein he said, as nearly as I can recollect, as follows, viz: that he had gone to Natchez sometime before, and hearing of the fertility of the Bayou Sara lands, he applied for some to Governor Gayoso, the Governor told him, "there is a tract of land that has been just given up by Mr. Stark, from character it is one of the best on Bayou Sara, you had better take it." Mr. Mather agreed to take it. After receiving it, he became doubtful of the title, and requested the Governor to oblige Mr. Stark to give up the *requete* and survey of said tract. The Governor called upon Mr. Stark (Col.) to do so, who refused. From conversation with George and James Mather, I am impressed they were both concerned, and that each of them claimed one thousand acres of said tract.

Interrogatory 4th. Was George Mather, the elder, brother of said James, present at the above conversation, or at any other time when the said Robert Stark's claim to said land was spoken of in your presence?

Answer. I do not know that he was. The conversation above mentioned took place before any decision had taken place. Since the decision at Natchez, George Mather the elder called upon me, and stated that he expected to be again sued by the heirs of Stark, and wished me to state what I knew on the subject; I did so, when he said, "It would be rather against me than for me, I have had one decision in my favor, and do not regard the claim of Stark." Previous to the conversation, he had stated he had become the proprietor of the whole two thousand acres.

Interrogatory 5th. Do you know any thing more material for the complainants in the above case? If so, state fully and at large.

Answer. I do not know that I do.

Cross interrogatories.

Interrogatory 1st. Where is your place of residence; and where has it been for some years past?

Answer. I live on Alexander's Creek, in the parish of Feliciana, State of Louisiana, where I have resided for the last sixteen or seventeen years.

Interrogatory 2d. What length of time were you employed by James Mather as an overseer, and where was James Mather's place of residence during that time?

Answer. I was employed two years, he then lived about seven leagues above New Orleans.

Interrogatory 3d. At what time were you acquainted with George Mather; and where was his place of residence?

Answer. In the year 1795. He lived in the same place James Mather did.

Interrogatory 4th. Were you ever acquainted with Col. Robert Stark? If so, at what time, and where did he reside?

Answer. I was acquainted with him in South Carolina, where he resided at a place called Fair Hill, in Elizabeth county, upwards of thirty years ago.

Interrogatory 5th. At what time did Colonel Stark leave the then district of Natchez; and when did he return?

Answer. I do not know.

Interrogatory 6th. If James Mather ever had any conversation with you, of the nature inquired of in complainants' 3d interrogatory, state particularly the expressions used by the said James Mather; when and on what occasion such conversation happened; whether you are certain George Mather was present, and what reply he made; and to whom did you first communicate such conversation?

Answer. I have stated the conversation as perfectly as I can, in my answer to the complainants' 3d interrogatory. I do not recollect whether there was any person present at the said conversation. It took place at his plantation on the coast *and* New Orleans. I believe I first communicated the conversation to Mr. Theodore Stark. When James Mather took away his hands from said place, I asked him whether he intended still to cultivate it. He said he did not, in consequence of the claim of Col. Stark. I think he said Colonel Stark threatened him with a suit for the land.

Interrogatory 7th. How often have you been called on as a witness in said trials in Wilkinson county, and about how many affidavits and depositions have you made in such trial or suit?

Answer. I am one of the first settlers in this part of the Bayou Sara country, and, in consequence, have been frequently called on as a witness. I don't recollect how many affidavits or depositions I have made.

Interrogatory 8th. What is your usual occupation and employment?

Answer. I am a farmer.

Samuel Postlethwates' deposition.

Interrogatory 1st. Do you know the parties in the above case, or either of them?

Answer. I do.

Interrogatory 2d. Are you not one of the executors of the late William Dunbar?

Answer. Yes.

Interrogatory 3d. Was or was not the said William Dunbar the surveyor of the district of Natchez, then so called, during the Spanish Government?

Answer. I believe he was.

Interrogatory 4th. Have you or have you not found, on examining the books of the said William Dunbar, entries in his handwriting of certain moneys paid by Robert Stark for surveying fees? If so, be pleased to state to whom the same is stated to have been paid; the quantity and description of the land surveyed; the amount paid by said Robert Stark; and particularly set forth the day and year in which the payments were made?

Answer. On examination of the books of the late William Dunbar, in a list of surveys paid and settled in account with Mr. Atchison, previous to the month of December, 1792, I find the name of Robert Stark "paid in part 2,000 arpens, $514." And in another list of survey's fees, received since "the month of December, 1792, up to July, 1794," there appears the name of Robert Stark, with these words annexed, "in full, balance $49.4."

John Minor's deposition.

Question by defendants' counsel. What was the character of Atchison, deputy surveyor under William Dunbar?

Answer. Deponent was well acquainted with him, and believes him to have been a man of truth and veracity, and such was his character.

John Hutchins' deposition.

Says that he is acquainted with the defendant, James Mather, and was acquainted with Robert Stark, in his lifetime; that he has been acquainted with James Mather about twenty-seven years; during the time he has known him, he resided in Louisiana; that he was also acquainted with Robert Stark, during the existence of the Spanish Government in the district of Natchez, and that the said Robert Stark removed from this country with his family during the existence of the Spanish Government, and did not return until after the Americans took possession.

He further states, that when the said Robert Stark was about to remove from this country, he sold his property and purchased a number of horses to take with him, which horses he kept on a small plantation on the Mississippi bluff, then belonging to the deponent's father, the late Anthony Hutchins, where he, the deponent, was in the habit of going on business for his father. And he recollects on one occasion, in company with the said Stark and several other persons, he heard the said Stark say, he had disposed of all his property and would leave the Government; he, the said Stark, was then asked what he would do with his land, and his answer was, that he had abandoned it, and would not hold land under such a damned Government, alluding to the Spanish Government. Some short time after that, the said Robert Stark left the country.

Question. Was the conversation above alluded to with yourself, or others?

Answer. I do not recollect whether the conversation was immediately with myself, or others present; think it probable it was not directed to me.

Joseph Videl's deposition.

Int. 1st. Did you know George Mather, brother of James Mather, and when did you become acquainted with him?

Answer. I became acquainted with George Mather in the year 1795.

Int. 2d. Do you know whether the said George Mather, previous to April, 1803, lived with James Mather, transacted business for him, or was in any manner connected with the said James Mather in business or property of any kind?

Answer. Deponent knows that said George Mather, previous to April, 1803, was living on the plantation of Mr. James Mather, his brother, transacted business for him, and it appeared to deponent that he was connected in business with his said brother.

Int. 3d. Do you know, or have you heard, of a law suit that was pending between Colonel Robert Stark and Mr. James Mather, about the year 1802, concerning a tract of 2,000 arpents of land on the Bayou Sara? If so, do you know of the said George Mather being at Natchez attending to the suit on behalf of his brother James?

Answer. I know of a suit that was depending some time ago between Colonel Robert Stark and Mr. James Mather; and I was acquainted with the circumstance of the said George Mather coming up to Natchez in 1802 or 1803, or thereabouts, to attend to said suit in behalf of his brother James.

Int. 4th. Did you ever hear the said George Mather speak of a suit or a controversy existing between his brother James and the said Colonel Stark, respecting the aforesaid tract of land, at any time previous to 1803?

Answer. That I dont recollect that the said George Mather and myself had any conversation respecting the said tract of land.

Int. 5th. Do you know of any circumstance which induces you to believe that George Mather, previous to April, 1803, had any knowledge or information that Colonel Stark had a claim to said tract of land on the Bayou Sara, which was held by his brother James? If so, state what those circumstances were.

Answer. Deponent refers to his 3d interrogatory for all the knowledge he had on the subject.

Prosper King's deposition.

Int. 1st. Do you know the complainants or defendants in the above case, or either of them, and did you know Robert Stark the elder in his lifetime.

Answer. I knew Robert Stark in his lifetime. I also know Theodore Stark and Horatio Stark. I do not know any of the other parties in the said suit.

Int. 2. Did you know or understand that Robert Stark the elder was ever put in the calaboza by Governor Gayoso? If so, state at what time, and what was the cause of his confinement?

Answer. I understood that Robert Stark the elder was confined in the calaboza by Gayoso, about the year 1794 and 1795; the cause of his confinement I understood was because he refused to relinquish his claim to a large tract of land on the waters of the Bayou Sara, to a certain gentleman in New Orleans.

Int. 3d. Do you or do you not know and believe, and was it not generally understood and believed, the confinement of the said Robert Stark was in consequence of a dispute with said Governor Gayoso, that the said Robert Stark refused to surrender his title to a tract of land on the waters of the Bayou Sara? If so, state all [you] know relative to that transaction.

Answer. I have answered this interrogatory in my answer to the second interrogatory.

Int. 4th. Do you know any thing more material for the complainants in the above cause? If so, state fully and at large, as if you were more particularly interrogated thereto.

Answer. I know nothing more than I have before stated.

Cross interrogatories.

Int. 1st. At what time did Robert Stark the elder first arrive in this country, during the existence of the Spanish Government? How long did he reside in this country under said Government, and about what time did he leave it?

Answer. Robert Stark the elder arrived in this country about the year 1790, and continued in the country until about the spring of the year 1796, when he left it.

Int. 2d. Do you or do you not know that said Robert Stark the elder abandoned the land which he had taken up under the Spanish Government when and before he left the country?

Answer. I have heard Robert Stark the elder complain that the Spanish Government of this district had taken his lands from him, but I never knew that he abandoned said lands.

Int. 3d. Is it or is it not known to you that said Robert Stark, previous to leaving the country, when under the Spanish Government, cursed both the lands and the Government, and swore he would have nothing further to do either with the lands or Government, or words to that effect?

Answer. It is not.

Int. 4th. When did said Robert Stark again return to this country, after abandoning it as above stated?

Answer. About the year 1799.

Seth Lewis' deposition.

Int. 1st. Do you know the parties in the above cause, or any, and which of them?

Answer. That he is unacquainted with any of the complainants except Theodore Stark, whom he hath always understood to be a son and one of the heirs of Robert Stark, deceased; and that he knows James Mather, one of the defendants, and was acquainted with the other, George Mather, in his lifetime.

Int. 2d. Did you preside, as judge of the Mississippi [Territory], in the district court of the district of Adams, held at Natchez, over the trial of an action of ejectment for 2,000 acres of land, on the waters of the Bayou Sara, between Robert Stark, lessee, and one Stotts, tenant in possession of James Mather?

Answer. That whilst he held the office of chief justice of the Mississippi Territory, he did preside at the trial of an action of ejectment, which he believes to be the same that is mentioned in the interrogatory, though the name of the tenant in possession is written Stotts, and not Scotts.

Int. 3d. Were or were not Samuel Hutchens, Anthony Hutchens, and William Atchison introduced and sworn as witnesses in that trial on the part of the defendant?

Answer. That he finds the names of Anthony Hutchens, Samuel Hutchens, and William Atchison mentioned in his notes as witnesses called and examined in the trial of the said cause; and from the order in which they are mentioned in his notes, he believes they were called and examined for the defendant, though he cannot be positive as to this. He well recollects that the Atchison here spoken of was formerly a deputy surveyor under the Spanish Government.

Int. 4th. Have you not understood and been informed, and do you not believe, the said witnesses, and each of them, have departed this life?

Answer. That he has been informed and believes that all the said witnesses are dead.

Int. 5th. From the best of your recollection and belief what did said witnesses, and each of them, depose on said trial, either on their principal or cross examination? Please state fully and at large.

Answer. That while he was acting in the office of judge above mentioned, it was his practice to take notes of such parts of the evidence given, and proceedings had, in the cases tried before him, as appeared to him to be material, especially in cases of importance. That on examining his papers he finds he had taken, and had preserved, such a note of the evidence given, and proceedings had, in the cause in question, an exact and true report of which is contained in the following statement, as nearly as his memory, aided by his said notes, enabled him to make it out, to wit:

STARK'S lessee,
vs.
STOTTS, &c.

Ejectment for 2,000 acres of land.

The plaintiffs produced and showed a warrant of survey of the premises in question, dated the 29th December, 1791, which had been obtained, and a petition dated 20th September, and recommended by Governor Gayoso on the first of October of the same year. It was then suggested that the land had been surveyed by William Dunbar, deputy surveyor under the late Spanish Government, but never returned to the surveyor general, nor certified by him; and they offered to prove the survey by the deputy, who was present; but this evidence was rejected, and per curiam—the act of the deputy is the act of the principal, but in this case is incomplete until sanctioned by him; it is then as if no survey had been made; and the evidence would be vain and could not effect the title.

1st. This part was reserved. William Dunbar, the deputy surveyor above mentioned, being examined as a witness, deposed his authority as such under the Spanish Government was to certify his proceedings as such to the surveyor general only, and not to the Governor; and that no patents issued on any but the certificates of the surveyor general. That it was always considered that a patent was necessary to complete a title; and that the late auditor once gave it as his opinion that a younger patent would take place of an elder warrant of survey. He further deposed, that the plaintiff had been in possession of the premises.

Major Minor, another witness examined in the trial of said cause, deposed that a warrant of survey under the Spanish Government was only the commencement of the ceremony of titles. That patents were always issued, and were essential to a good title; and that lands could not be sold or disposed of by will without a patent.

Anthony Hoggett, another witness examined in the trial of the said cause, deposed that he had held lands by a warrant of survey without a patent; and that he had sold his right which he had, by assigning the warrant.

This defendant then showed and relied on a patent of the premises granted to James Mather, and dated the 3d of April, 1794.

Anthony Hutchens, another witness called and examined in the trial of the said cause, deposed that he was intimate with the plaintiff, Stark, at the time he was on the land in question, and often heard him say he did not like the land; that once he called on him, and told him he had offered to exch., (here a word is contracted in the deponent's notes, so as to leave the sense somewhat obscure; but on a mature reflection he is convinced that the word written in a contraction is "exchange," and the meaning that he had offered to exchange the premises for other land;) but that Gayoso had refused, and he was angry. That some time afterward he told him

he had left the premises, and would never return to live on it, but only to take care of his corn. That he (the witness) advised him to keep it, but he persisted, declaring he would leave the country and never return, and did go.

Samuel Hutchens, another witness called and examined in the trial of the said cause, deposed that Stark, the plaintiff, improved another place, and said he would give up the premises in question, and advised the witness to take it up.

William Etchenson, another witness called and examined in the trial of the said cause. That on finding out the premises, in company with Colonel Ozmun, for whom he had some surveying to do, Stark, the plaintiff, told him to survey this land for him, for he had written to the Governor to surrender it.

The court in their charge to the jury, said that the plaintiff's title depending on a warrant of survey alone, did not amount to a legal title, and could not prevail against a complete patent. That it was proper for them to consider the evidence rebutted to the plaintiff's having given up possession, and if they found he had, it was a circumstance tending still further to revoke his title. The deponent further saith, whether any other material evidence was or was not given on the trial of the said cause, neither his notes nor his memory at this distance of time enable him to say.

Int. 6th. Was or was not the plaintiff permitted on said trial to give evidence of any equitable or alleged equitable title that he might have to the premises then in controversy?

Answer. That he hath no knowledge of the matters contained in the interrogatory, further than he has already answered.

Int. 7th. Do you know any thing further beneficial to the defendants in this suit? If so, relate the same fully.

Answer. That he does not recollect any thing further.

Cross interrogatories.

Inter. 1st. Was the said William Atchison introduced [as] a witness on behalf of the defendant on the trial of the said action of ejectment, and did or did not the said Atchison testify that he surveyed the land in question originally for Robert Stark, and that afterwards, some time previous to the year 1795, an order of survey was obtained by James Mather from the Spanish Government for the same land, and that he then, said Atchison, went round the land with George Mather, brother of said James, who acted as agent for his said brother James, and showed him the lines which he had run in the original survey made for the said Robert Stark?

Answer. That he hath already answered this interrogatory, as fully as he hath any knowledge of the subject thereof, in his answer to the foregoing direct interrogatories.

Int. 2d. Did or did not the said Atchinson state that George Mather acted as the agent of his brother James in ascertaining the boundaries of the said land, and taking possession thereof after Robert Stark was dispossessed?

Answer. That he does not recollect, nor has he noted, any such evidence.

Int. 3d. Was the said Anthony Hutchens introduced by the defendant in this ejectment case, to prove, amongst other things, a conversation which took place between Robert Stark and himself previous to said Stark's leaving the country, respecting the said land? and did or did not said Hutchens testify, that in said conversation with said Robert Stark that he advised said Stark not to leave the country, as he would be coming back afterwards with his wallet on his back; and that Stark's reply was, that the commandant or governor had taken his land from him and put him in the calaboza, and that he would not and could not live under such a damned government, or words to that effect?

Answer. He recollects there was some evidence of a quarrel, or difference, between the deceased Stark and Governor Gayoso; but not having noted it, cannot now recollect the particulars of it. He believes that, at the time, he considered it immaterial, and therefore did not note it. In other respects he saith that he hath already answered this interrogatory, so far as he hath any knowledge of the matter.

Int. 4th. Did you know George Mather, brother of James Mather; do you know whether he acted as the agent of his brother James, both in New Orleans and the Mississippi Territory, at or previous to the trial of the said ejectment, or afterwards? Do you know whether he acted as his brother's agent respecting the lands in question; whether he, the said George Mather, was present at the trial of said ejectment, or whether he was in the territory previous thereto, making preparation therefor?

Answer. That he knew George Mather, and thinks it probable that he might have acted as agent for his brother George Mather, as supposed in the interrogatory; but is unable to say, with certainty, whether he did or did not; nor can he say whether he was present at the trial, or what part he might have taken in preparing the cause for trial.

Int. 5th. Had you any conversation with George Mather respecting said land, and of the said Robert Stark having claim thereto, any time previous to the 30th April, 1803; or do you know of any fact or circumstance to induce a belief *of* that he, George Mather, had a knowledge that Robert Stark or his heirs had a claim to the land in question, any time previous to the 30th April, 1803? If so, state them fully.

Answer. That he has no recollection of any such conversation, nor of any fact or circumstance of the tendency supposed, unless the action of ejectment, which he believes was pending previous to the time mentioned, be considered as such.

Int. 6th. On the trial of said ejectment, was or was not the principal, or one of the grounds of defence set up, that the lessor of the plaintiff having only an equitable title, could not, by the rules of

the common law, recover in an action of ejectment, particularly against one holding the legal title, but must resort to a court of equity; and was or was not the charge of the court in conformity with said rule of law?

Answer. That he has already answered this interrogatory in his answer to the fifth direct interrogatory, as fully as he hath any knowledge of it, or recollection of the matter.

Interrogatory 7th. Did or did not the said William Atchinson state, on his examination, that Robert Stark had paid him for surveying the said land for him, Stark; and what sum did he say he had so paid?

Answer. That he doth not recollect, nor has he noted any such evidence.

Interrogatory 8th. Do you know any thing more material for the complainant in the above cause? if so, state it fully and at large.

Answer. That he doth not recollect any thing further on the subject.

Moreau Liston's deposition.

Interrogatory 1st. Are you acquainted with the law of the Spanish Government respecting the grants of land made by that Government? If so, what were the formalities to be observed in obtaining grants, particularly as to the requisites in order to ascertain whether the land was vacant or not, and in what manner the survey was to be made?

Answer. That for nearly the space of twelve years passed he has practised in the courts of this State, he has made the Spanish laws his particular study, and has had occasion to know the several ordinances made relative to concessions or grants of land under the Government of the King of Spain. That with regard to the formality required to obtain concessions of land under that government, and to establish the fact of the land being vacant or not, he cannot do better than to state the text of the Spanish ordinances on that subject; that by the 12th article of the ordinances published by the Governor, O'Reilly, 1770, it is declared, "that all concessions should be granted by the Governor General in the name of the King, who should name at the same time a surveyor to ascertain the boundaries, as well of the front as the depth, in presence of the ordinary judge of the district, and two inhabitants, owners of adjoining property, to be present at the survey; that the said four persons should sign the '*proces verbal*' when drawn up, and of which three copies should be made, one to be deposited in the office of the secretary of the Government and cahildo, one for the use of the Governor General, and the third for the proprietor, to be annexed to the title of concession." That by the ordinance of the Governor Gayoso de Lemor, of the month of January, 1798, article 17th, he directs the same formalities to be observed in obtaining concessions as had been established by the ordinances of his pre-

decessors; that the King of Spain having published, on the 22d of October, 1798, an order, by which he withdrew from the Governors of provinces the right or power to grant concessions, and invested it in the intendents of the same provinces, Don Juan Vintuza Morales, the then intendent of Louisiana, issued a similar order concerning concessions on the 17th July, 1799, the fifteenth article of which is conceived in these terms: "All concessions will be granted in the name of the King by the intendent general of the province, who will order the surveyor general, or a deputy to be appointed by him, to make the survey and demarcation of the land, by ascertaining the boundaries, as well of the front as the depth; which operation shall be done in the presence of the commandant or syndic of the district, and of two neighboring planters; and said four persons shall sign the proces verbal which the surveyor shall draw up." By the 16th article of the same ordinance it is declared, "That the aforesaid proces verbal, with a certified copy of the same, shall be sent by the surveyor to the intendent's office, in order that upon the original may be written, with the consent of the procurer fiscal, the requisite title."

Interrogatory 2d. Should a grant be made by the Government, and it should afterwards be found that the land was not vacant at the time of the survey and grant, or that the formalities required to ascertain whether vacant or not had not been observed, would or would not the grant be deemed void by the laws of Spain, and the grant inure to the benefit of the person whose interest had been infringed on?

Answer. That he cannot answer positively to the queries contained in the same; which involve a point of law upon which the tribunals have not yet decided, that this witness knows of; but he verily believes, from his study of the Spanish laws, and the ordinances relative to concessions, that the first grantee who possessed a title definitive, and in due form, cannot be afterwards deprived of the same by the Government in favor of the second grantee, unless he first had incurred the forfeiture of his tenure, by having omitted or neglected to fulfil the conditions of his grant; that, by law 30, title 18, *partida* 4, it is decreed, "That if the King shall grant letters of privilege, (or containing some benefit or,) contrary to the rights of some particular person, as if they deprived such person without right or reason of what belonged to him, or caused some manifest damage to his person or property, such letters would have no force or effect, and would not be executed or enforced until the party to whom they are addressed should have laid the circumstances before the King, and prayed him to have made known for what reason he had ordered such letters to have been put in execution, for it shall be supposed that when the King was informed of the fact he would not persist in their execution." And by the law 31, same title, it is declared, "that neither the Emperor, the King, nor any other sovereign, can grant letters of privilege con-

trary to natural right; and, if they should, such letters would have no force: as, for example, in a case where the King should give, by privilege, to some person the property of another individual who had done nothing to cause such privation, except indeed the King had occasion for the property for some object of public utility to his kingdom; but even then the owner of the property should be indemnified for the privation he so suffered, by payment of the value in money, or other equivalent." An original grantee may be despoiled of his property by its reversion to the royal domain, but only in cases seen and provided for by the ordinances. According to the second article of O'Reilly's ordinances of 1770, *such* reversion can happen, except in the cases which are expressed in these terms: "the grantees established on the banks of the river shall be bound to make, in the three first years, levees sufficient to protect the land from inundation, and ditches to drain off the water. They shall also keep in good order a highway of at least forty feet in width between the ditch within, and running along the levee and the fence, with bridges of at least twelve feet over the drains which cross the highway. The said grantees are also bound to clear, within the said first three years of their possession, the whole front of two arpents; under case of non-performance of these conditions, *these conditions*, their lands shall be reunited to the dominion of the King, to be granted anew thereafter; and the judge of every place shall be responsible to the Governor for his attention to this matter."

It seems, therefore, to this witness, that an original grantee could not be totally deprived of the land granted, but in consequence of having [failed] in the performance of some of those conditions, and that all positive concessions, made without just cause of recession, would be null; and what confirms this witness in the idea that the land in such case would be restored to the first grantee, is the 32d article of the ordinance of the intendent Morelles in 1799, which is expressed as follows: "Concessions nor sales of any land shall unless previously formal information has been received that they are vacant; and to avoid prejudicial errors every one is informed that, besides the signature of the commandant or syndic of the district, this information should be witnessed by that of the surveyor and two planters of the neighborhood of the land demanded; always provided that if, notwithstanding this precaution, it should afterwards be found that said land had another owner who claimed the same, and that there was motive sufficient to restore it to him, the commandant or syndic, the surveyor, and the planters who signed the information, shall make good all damages to the party they have wronged."

Interrogatory 3d. If an order of survey should be made in favor of a person, and a settlement and improvement made thereon agreeable to law, would or would not a subsequent grant to another person by the Government be considered void, or would not the second grant inure to the benefit of the first settler?

Answer. That the preceding answer to the second interrogatory applies to the question herein contained.

Interrogatory 4th. Do you know any thing more material to the complainant in the above cause? If so, state it fully and at large.

Answer. That all he can state further on this subject is, that ordinances hereinbefore mentioned of O'Reilly, Gayoso de Lemos and Morales, were considered as law, and are still so considered in the courts of the State, relative to grants or concessions delivered under the Spanish Government, and that the passages [are] faithfully extracted from authentic collections of the said ordinances now in possession of the witness, and within his view; and *and* he further declares that it was the custom of the Spanish Government, on the first application for a concession, to issue an order for the surveying of the lands applied for, and upon receiving the survey and plan annexed to it, the governor intendent, as the case was, granted the definitive title, that is to say, the concession of the land.

Thomas Calvit's deposition.

Interrogatory 1st. Do you know the complainants in the above cause; and did you know Robert, the elder, in his lifetime; and do you know James Mather; and did you know George Mather in his lifetime?

Answer. He is acquainted with some of the heirs of Robert Stark, the elder; that he was intimately acquainted with Robert Stark, the elder, in his lifetime; and that he was also acquainted with James and George Mather.

Interrogatory 2d. Do you know of the said Robert Stark, the elder, obtaining from the Spanish Government a grant for a tract of land on the waters of bayou Sarah; and do you know of Governor Gayoso confining the said Robert Stark in the fort, or calaboza, in order to compel him to give up the said tract of land so granted to him; and do you know that the said Stark refused to, and persisted in refusing to, give up or surrender said tract of land? State all you know on the subject.

Answer. That he understood, and does believe that he, the said Robert Stark, did obtain from the Spanish Government a grant for a tract of land on the waters of the bayou Sarah; and further saith that he understood, and does believe, that the said Robert Stark was confined in the fort in consequence of the displeasure of Governor Gayoso, but for what cause, or for what length of time, he does not know?

Interrogatory 3d. Do you know what time Robert Stark, the elder, left the Spanish Government and returned to the United States?

Answer. That he believes the said Robert Stark left this country, then under this Government, and returned to the United States in seventeen hundred and ninety-five or six, but which year is not positive.

Interrogatory 4th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large.

Answer. That he does not know or recollect any thing more.

Thomas Cummings' deposition.

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Robert Stark, the elder, in his lifetime; and that he now knows Theodore Stark, and Col. Horatio Stark; of the other complainants he has no knowledge; that he knows James Mather, one of the defendants, but is not acquainted with George Mather.

Interrogatory 2d. Did you [know] William Atchison in his lifetime; and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. He knew William Atchison, but has not any knowledge of his testifying before the board of commissioners but from hearsay.

Interrogatory 3d. What was the general character of said Atchison as to truth and veracity? was he entitled to credit when testifying as a witness, and would you believe him when under oath from what you know of his character?

Answer. That from the general character of the said William Atchison, as to truth and veracity, he was not entitled to credit when testifying as a witness, and that he would not believe the said Atchison when on oath.

Interrogatory 4th. Do you or do you not know that it was the custom, under the Spanish Government, for persons obtaining lands under that Government to pay the expense of surveying and completing the title thereto into the hands of the surveyor of the district.

Answer. That it was the custom to pay the money for completing the titles into the hands of the surveyor of the district; and that, when the grants were completed, they were forwarded to the district surveyor, to be delivered to the person to whom the land was granted.

Interrogatory 5th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large, as if you were particularly interrogated thereto.

Answer. That he knows that Robert Stark, the elder, was at great expense and trouble in exploring the bayou Sarah country, and that the said Robert Stark purchased corn and bacon from this deponent, for the use of his hands on his plantation on the waters of the bayou Sara, which plantation was granted to the said Robert Stark; and that from the trouble and expense of the said Robert Stark with regard to his plantation, this deponent does not believe that he ever surrendered his title to the tract of land in question, but that it was taken from him, as he is informed and believes.

London Davis's deposition.

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Robert Stark, the elder, in his lifetime, and that he knew Theodore Stark and Colonel Horatio Stark; of the other complainants he has no knowledge. He knows the defendants.

Interrogatory 2d. Did you know William Atchison in his lifetime, and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. He knew William Atchison. It is reported that said Atchison died in this country, which he does not believe. He does not know of the said William Atchison being examined before the board of commissioners, west of Pearl river, but from report.

Interrogatory 3d. What was the general character of *of* said Atchison as to truth and veracity; was he entitled to credit when testifying as a witness; and would you believe him when under oath, from what you know of his character?

Answer. From the general character of the said William Atchison, as to truth and veracity, he was entitled to credit when testifying as a witness, and he, the deponent, would believe the said Atchison when on oath.

Interrogatory 4th. Do you or do you not know that it was the custom, under the Spanish Government, for persons obtaining lands under that Government to pay the expense of surveying and completing the title thereto, into the hands of the surveyor of the district?

Answer. That it was the custom, under the Spanish Government, for persons obtaining lands to pay the expense of surveying and completing the title thereto into the hands of the surveyor of the district.

Interrogatory 5th. Do you know any thing more material for the complainants in the above cause? If so, state it fully and at large, as if you were particularly interrogated thereto.

Answer. That he knows the said Robert Stark, in his lifetime, did obtain from the Spanish Government a tract of land on the waters of the bayou Sarah; that a few years after there was a dispute with the said Robert Stark and Governor Gayoso, and it was reported and believed that said Governor Gayoso confined the said Robert Stark in the fort, or calaboza, because the said Robert Stark would not surrender his title to the said tract of land; but in what year the confinement was made this deponent, at this distant time, does not recollect.

Joseph Johnson's deposition.

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he knew Colonel Robert Stark in his lifetime; and that he knows Mrs. Sophia Gildart, Theodore Stark, esq., Colonel Horatio Stark, and Miss Elizabeth Stark; of the other complainants he has no knowledge. He knows the defendants.

Interrogatory 2d. Did you know William Atchison in his lifetime; and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. That he knew a man by the name of Atchison who was surveyor under the Spanish Government, but of his christian name he is not certain, but believes it was William; he further says he saw on file or on record, in the land-office west of Pearl river, some depositions made by the said Atchison, which were not true in some of their most material facts.

Interrogatory 3d. What was the general character of the said Atchison as to truth and veracity; was he entitled to credit when testifying as a witness, and would you believe him when under oath, from what you know of his character?

Answer. That so far as he was acquainted with the character of the said Atchison, as to truth and veracity, it was bad; and believes he was not entitled to credit when testifying as a witness, and that he would not have believed him when under oath.

Samuel Stockett's deposition.

Interrogatory 1st. Do you know the complainants and defendants in the above cause; and did you know the said Robert Stark, the elder, in his lifetime?

Answer. That he had no knowledge of the defendants, and that he had no knowledge of Robert Stark, the elder, but that he knew Mrs. Sophia Gildart, Theodore Stark, esq., Colonel Horatio Stark, and Miss Elizabeth Stark; of the other complainants he has no knowledge.

Interrogatory 2d. Did you know William Atchinson in his lifetime; and do you know of his being examined as a witness respecting certain claim or claims before the board of commissioners west of Pearl river?

Answer. That he knew a man by the name of William Atchinson, who was surveyor under the Spanish Government; he further says that he saw on file, or on record, in the land-office west of Pearl river, some depositions made by the said Atchinson, which were not true in some of their material facts.

Interrogatory 3d. What was the general character of the said Atchinson as to truth and veracity; was he entitled to credit when

testifying as a witness; and would you believe him when under oath, from what you know of his character?

Answer. That so far as he was acquainted with the character of the said Atchinson, as to truth and veracity, it was bad; and believes he was not entitled to credit when testifying as a witness, and that he would not have believed him when under oath.

Lewis Evans' deposition.

Interrogatory 1st. Do you know the complainants in the above cause; and did you know Robert Stark, the elder, in his lifetime; and do you know James Mather, and George Mather in his lifetime?

Answer. That he did know Robert Stark, the elder, in his lifetime; and had some knowledge of James Mather, George Mather, and perhaps of both.

Interrogatory 2d. Do you know of the said Robert Stark, the elder, obtaining from the Spanish Government a grant of a tract of land on the waters of the bayou Sara; and do you know of Governor Gayoso confining the said Robert Stark in the fort or calaboza, in order to compel him to give up said tract of land so granted to him; and do you know that the said Stark refused, and persisted in refusing, to give up or surrender said land? State all that you know on that subject.

Answer. That he had no personal knowledge that Colonel Stark obtained a grant of land from the Spanish Government on the bayou Sara, but that he has no doubt that such was the fact; as all applicants, who could have any pretensions to farming, on petition to Governor Gayoso for land, were qualified; and Robert Stark, from his situation in life at that time, was not likely to form an objection to the rule so general. He further says that he knew Colonel Stark was confined in the "fort," and to the best of his remembrance "Colonel P. B. Brien and Colonel Thomas Green" were also under an arrest at the same time; the latter in the fort, the former at the house of the parish priest, and as the court-house for this city. The cause of their confinement, at this distance of time, he cannot particularly state, but believes it was caused by suspicion that the parties above named were inimical to the Spanish Government, or had uttered language against its officers that had given offence to Governor Gayoso. A demand of withdrawing his claim (if such he had) to the land in question, is not within the knowledge of deponent; but it is not unlikely that the Governor, in anger, (which often made him violent in his expressions,) would remind Colonel Stark of favors received, and, as he might deem him unworthy of them, would demand a surrender of all that could be got back.

Interrogatory 3d. Do you know what time the said Robert Stark, the elder, left the Spanish Government and removed to the United States?

Answer. That the time Colonel Stark left the country deponent cannot remember; it must have been in 1794 or 1795.

Cross interrogatories.

Interrogatory 1st. If you know any thing of a grant of land from the Spanish Government to Robert Stark, deceased, state particularly how, and from what source, you know the same; and what you have related; what do you know from your own knowledge, and what from the information of others, and from whom? Did you ever see any Spanish grant from the Spanish Government to the said Stark? If so, of what description; was it a full patent, a warrant of survey executed, and by whom, or how otherwise, and when?

Interrogatory 2d. Do you know that Governor Gayoso ever confined said Stark for not giving up his land? If so, how, and from what source do you know the same? Who arrested him, and by what process was he so arrested, and from whom have you any such information?

Interrogatory 3d. Do you know that said Colonel Stark was arrested or confined at any time by the Spanish Government? And, if so, was not the alleged cause against said Stark his putting a white man in the pillory, as an alcaide in the district in which he then resided, or for what other cause?

Answer. Deponent, to the 1st, 2d, and 3d cross interrogatories, can only [refer] to his first answers.

Interrogatory 4th. Do you not know, or believe, or been informed by said Stark, or how otherwise, that said Stark abandoned said tract of land, and gave up the same in disgust with the Spanish government of the Natchez district; and have you not heard him curse said government, and swear, or earnestly affirm, that he never would hold any land in it, or under it, and what else to what effect?

Answer. He has a recollection that Colonel Stark did often speak exceeding intemperately of the existing government, and that he did, perhaps in 1793, leave the country in disgust, and, as was understood, to return no more; which would no doubt have been adhered to, had not a change of government took place. The length of time which has passed since the transaction above stated, and indeed the little interest deponent took in them at the period they took place, makes it extremely difficult to say any thing positive that can, in any way, be important.

STATE OF MISSISSIPPI,
High court of errors and appeal:

I, Robert A. Patrick, clerk of said court, do hereby certify, that the foregoing sixty-three pages, and the above, contain a true copy of the record of the proceedings and evidence had in the case first therein stated, as fully as the same remains on the records of the supreme court of the State of Mississippi now in my possession.

Given under my hand and official seal, the 15th of October, A. D. 1838.

R. A. PATRICK, *Clerk.*
By F. G. HOPKINS, *Deputy clerk.*

THE STATE OF MISSISSIPPI:

I, William L. Sharkey, chief justice of the high court of errors and appeals of the State aforesaid, do certify that Robert A. Patrick, whose name is signed to the above certificate by his deputy F. G. Hopkins, was, at the time of signing the same, clerk of the high court of errors and appeals of the State of Mississippi, and that his certificate is in due form.

Given under my hand and seal, the thirteenth day of April, A. D. 1841.

W. L. SHARKEY, [L. S.]

It was admitted that said suit in error was dismissed for want of jurisdiction, by the Supreme Court of the United States, in 1828. The counsel for the plaintiffs objected to the reading of said record, but the court permitted it to be read; and then the plaintiffs' counsel moved to reject the same as evidence to go to the jury, but the court overruled the motion, and admitted the record to go to the jury; stating the opinion of the court to be, that an equitable title was not evidence in an action of ejectment, but that the record was evidence, to go to the jury, of any fact decided by it; and this was all the evidence before the jury.

To these opinions and decisions of the court the counsel for the plaintiffs then and there excepted. The grounds taken by plaintiffs' counsel against the admissibility of said decree, and overruled by the court, were—

1st. That it does not purport to be a record on its face and in its context.

2d. That said record does not disclose nor contain a final decree; neither the said record, nor the said decree therein, being signed by the judges of the said supreme court of Mississippi, nor either of them.

3dly. That the pleadings and context of said record show that the chancery suit was entertained and treated by the said supreme court as a matter of original jurisdiction, whereas the statutes of Mississippi expressly provide that the opinion of said supreme court shall be certified to the court below; whose action and adoption alone can render the opinion of the supreme court final upon a question of law adjourned for its opinion.

4thly. That the facts and the law of the case did not give the chancery court jurisdiction, inasmuch as, after the treaty of 1783, a Spanish warrant or order was a mere nullity, and could only be rendered valid by the holder bringing himself within the first section of the act of Congress of 1803, by residence and cultivation; whereas the record shows that Stark was not within that act; nor, if he had been, could he have derived any equity against a title confirmed by the articles of agreement and cession between Georgia and the United States, of April 14th, 1802.

5thly. That jurisdiction, legal and equitable, was vested elsewhere by the 6th section of act of 1803; such investiture of jurisdiction in an inferior tribunal being exclusive of that of any other tribunal.

6thly. That a record or decree out of chancery is not evidence of a legal, but an equitable title only; and is, therefore, not purtenant to the issue joined.

7thly. That the decree, if read at all, must be read as an estoppel by the record, and subject to the rules as to estoppels.

8thly. That a decree in chancery must be read on the same footing as a judgment at law; and, unless carried out by a conveyance, can have no greater effect than a judgment in ejectment. No objection is made to the form of authentication on account of its being by deputy.

These objections being overruled, and exceptions having been taken to the decisions of the court thereupon, the counsel for the plaintiffs moved the court to instruct the jury—

1st. That the patent, legally and fully executed from the Spanish Government to James Mather, bearing date April 3d, 1794, having been confirmed by the articles of agreement and cession between Georgia and the United States, and by the certificate of confirmation by the board of commissioners sitting west of Pearl river, in Mississippi Territory, together with the deed from James Mather to George Mather, vests in the plaintiffs a perfect title in fee simple to the lands granted, if the jury believe that the said plaintiffs are the heirs of the said Mather.

2ndly. That the decree read in evidence by the defendants' counsel, does not per se divest plaintiffs, or the ancestor of plaintiffs, of the legal title, but that said title remains unaffected at law by said decree, and is still in plaintiffs, if the jury believe them to be the heirs of said Mather.

3dly. That said decree, so far as it undertakes to vacate the title of the said plaintiffs, must be understood by the jury to pronounce said title void in equity, and not at law.

4thly. That the mere order in said decree that an habere facias possessionem should issue, is not evidence that it did in fact issue. Still less can any presumption arise therefrom, that defendants took possession under said decree; and though possession may have been taken lawfully, it could not be lawfully holden against plaintiffs' title.

5thly. That the right of possession follows the legal title.

Whereupon the court gave the 1st and 5th, and refused the 2d, 3d, and 4th instructions; to which decisions of the court refusing said instructions, plaintiffs' counsel then and there excepted. And thereupon the counsel for the defendants moved the court to instruct the jury—

1st. That the title claimed by the plaintiffs under the certificate of confirmation to George Mather, of date 10th April, 1806, and the

other title papers offered by plaintiffs, having been declared void by the said decree of the supreme court of this State, in proof in the case as against the heirs of Robert Stark, whose title the defendants are admitted to hold, cannot, under the proofs in the case, be the foundation of a claim by the plaintiffs to recover in the present action against the defendants.

2dly. That the possession of the defendants, and those under whom they claim, of the land in question, under the decree of said supreme court of this State, which decree is admitted in evidence, is a good legal title against all the world, except some person can show a better title.

3dly. That the title of said plaintiffs, claimed under said confirmation and other title papers above, which has been declared void as between the said parties, is not evidence of plaintiffs' right to recover in this action against said defendants.

4thly. That the decree of said supreme court of this State between the parties, is good prima facie evidence of a rightful possession by the defendants of the land in question, if the jury believe, from the evidence, that the possession of said defendants, or those under whom they claim, was taken under said decree.

5th. That the possession taken under said decree of the land in question is a legal possession, and a legal title, and good against any claim by defendants, based upon said certificate of confirmation to George Mather, and the other title papers which have been so declared void.

6thly. That the decree in question, unless reversed or invalidated by proof, is evidence of the rights adjudicated between the parties to it, and conclusive and sufficient evidence of all such rights.

7thly. That if the jury believe that the title offered in evidence by said plaintiffs is fraudulent and void against said defendants, the plaintiffs cannot recover.

8thly. That the decree is conclusive evidence of such fraud, unless reversed or invalidated by proof.

9thly. That plaintiffs cannot recover, unless defendants are unlawfully in possession.

10thly. That a possession by the defendants, under the decree, is not an unlawful and tortious possession as against the plaintiffs.

Whereupon the court gave the 2d, 4th and 7th, 9th and 10th, instructions, and refused to give 1st, 3d, 5th, 6th, and 8th instructions; to which opinions and decisions of the court giving said 2d, 4th, 7th, 9th, and 10th instructions, the counsel for the plaintiffs then and there excepted, and before the jury retired, prayed the court that this, their bill of exceptions, might be signed, sealed, and enrolled, and made part of the record in this case, which is done accordingly.

(Signed) S. J. GHOLSON, [L. S.]

Therefore it is considered by the court, that the said plaintiffs take nothing by their bill, but for their false clamor, be in mercy,

&c., and that the defendants aforesaid go thereof hence without day, and recover of and against the said plaintiffs their costs and charges by them in and about their defence in this behalf expended.

Whereupon the plaintiffs' counsel moved the court for a new trial; which motion being fully argued, it is ordered by the court that the same be overruled.

From which judgment the plaintiffs pray a writ of error to the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Southern dist. of Mississippi, circuit court U. S.:

I, William H. Brown, clerk of said circuit court, do hereby certify that the foregoing 101 pages, and what is contained on this page, contains a full, true, and complete transcript of the record in the case therein named, as the same now remains of record in my office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court at Jackson, this 9th day of December, [L. S.] A. D. 1842, and in the 67th year of the independence of the United States.

W. H. BROWN, *Clerk.*

UNITED STATES OF AMERICA, *ss:*

To James A. Stewart, Elizabeth Prosser, John W. Leatherman, and Mabry Morris, or Messrs. Montgomery & Boyd, and George Winchester, esq., their attorneys at law, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday in January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the ninth circuit and southern district of Mississippi, wherein Doe, on demise of Philip Hickey and Anna Hickey his wife, and Elizabeth Wykoff, and Francis T. Duncan *is* plaintiffs, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel J. Gholson, one of the judges of the circuit court of the United States for the southern district of Mississippi, this ninth day of December, in the year of our Lord one thousand eight hundred and forty-two, and in the 67th year of the independence of the United States.

S. J. GHOLSON.

Filed 7th February, 1843.

1090.

SUPREME COURT OF THE UNITED STATES.

No. 84.

BERNARD PERMOLI, PLAINTIFF IN ERROR,

vs.

MUNICIPALITY NO. 1, OF THE CITY OF NEW ORLEANS.

IN ERROR TO THE CITY COURT OF THE CITY OF NEW ORLEANS.

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J. & G. S. Gideon, printers.

THE STATE OF LOUISIANA,
City Court of New Orleans.

MUNICIPALITY No. 1 OF THE CITY OF NEW ORLEANS, *Appellant*,
vs.
BERNARD PERMOLI, *Appellee*.

Appeal from the honorable Gallien Préval, Associate Judge.—Filed on the 19th day of December, 1842.

CITY COURT OF NEW ORLEANS.

Before the honorable Gallien Préval, Judge.

MUNICIPALITY No. 1,
vs.
BERNARD PERMOLI.

Plaintiff demands of defendant fifty dollars fine, for having, on the 9th November, 1842, officiated on the body of Mr. Louis Le Roy, in the church St. Augustin, in contravention of an ordinance passed on the 31st of October last.

November 11th, 1842.

Citations issued and handed at defendant's domicile on the 11th November, *on* a free white man above fourteen years of age, residing there.

November 14th, 1842.

Exception.

MUNICIPALITY No. 1,
vs.
THE REV. B. PERMOLI.

The defendant comes in court, by D. Seghers, his counsel, and excepts to the claim of the plaintiff for the following reason:

He contends that he is not bound to answer, because the plaintiffs do not specifically set forth the ordinance of police, to which they assert that the defendant has contravened, nor that part or article of the ordinance to which the pretended contravention is applicable, nor the fact which they pretend has constituted that contravention, and the day and place when and where it occurred.

P. R. C., *D'y Clk.*

This defendant therefore prays the judgment of this honorable court, whether he be bound to answer; and he further prays to [be] hence dismissed with costs.

Signed, D. SEGHERS, *of Counsel.*

Le defendeur vient en cour, par le ministère de D. Seghers, son avocat, et excepte à la réclamation des demandeurs pour les raisons suivantes:

Il soutient qu'il n'est pas tenu de répondre, parceque les demandeurs n'ont spécifié ni l'ordonnance de police, à laquelle ils prétendent que ce defendeur a contravenu, ni la partie ou l'article de l'ordonnance qui s'applique à la prétendue contravention, ni le fait qu'ils prétendent avoir constitué la dite contravention, ainsi que le jour et le lieu ou ce fait s'est passé.

A ces causes, ce defendeur requiest le jugement de cette cour sur le point de savoir s'il est tenu de répondre, et il requiest de plus d'être renvoyé quitte de la demande avec dépens.

Signé, D. SEGHERS, *Avocat.*

November 18*th*, 1842.

Answer.

The answer of the Reverend B. Permoli, residing at New Orleans, to the complaint of Municipality No. 1.

This respondent, for answer, says: True it is that the corpse of Mr. Louis Le Roy, deceased, was brought (enclosed in a coffin) in the Roman Catholic church of St. Augustin, and there exposed; and that when there thus exposed, this respondent, as stated in the complaint, officiated on it, by blessing it, by reciting on it all the other funeral prayers and solemnity *on it*, all the usual funeral ceremonies prescribed by the rites of the Roman Catholic religion, of which this respondent is a priest. That in this act he was assisted by two other priests, and by the chanters or singers of the said church.

This respondent avers, that in so doing he was warranted by the constitution and laws of the United States, which prevent the enactment of any law prohibiting the free exercise of any religion. He contends that the ordinance on which the complainants rely is null and void, being contrary to the provisions of the act of incorporation of the city of New Orleans, and to those of the constitution and laws of the United States, as above recited.

This respondent therefore prays to be hence dismissed with costs.

Signed, D. SEGHERS, *of Counsel.*

Document offered in evidence.—Filed November 23*d*, 1842.

Municipalite No. 1.—Séame du 31 Octobre, 1842.—A. R. 67.

Résolu qu'à dater de la promulgation de la présente ordonnance, il est defendu de transporter et d'exposer dans aucune des églises Catholiques de cette Municipalité, aucun corps mort, sous peine d'une amende de cinquante piastres, à recevoir au bénéfice de cette Municipalité, contre toute personne qui aurait transporté et exposé, ou fait transporter ou exposer aucun corps mort à aucune des dites églises, et d'une pareille amende de cinquante piastres contre tout

prêtre qui célébrerait aucun enterrement à aucune des dites églises, et que tout les corps morts devront être portés à la chapelle obituaire, située rue des Remparts où se feront les cérémonies funèbres ainsi qu'il est d'usage.

Signé, PAUL BERTUS, *Recorder.*

Approuvé.

Signé, D. PRIEUR, *Maire.*

Séame du 7 Novembre, 1842.

Résolu, que la résolution passée le 31 Octobre dernier, relativement à l'exposition des corps dans les églises Catholiques, soit amendée de manière à abroger dans la dite résolution l'amende présente contre toute personne qui aurait transporté et exposé, ou fait transporter ou exposer aucun corps mort dans les dites églises.

Il est de plus résolu, que la dite amende sera encourue par tout prêtre qui officiera à tout enterrement fait dans tout autre église ou chapelle Catholique, autre que la chapelle obituaire.

Signé, PAUL BERTUS, *Recorder.*

Approuvé.

Signé, D. PRIEUR, *Maire.*

Pour copie conforme.

Signé, EUG'NE LA SERE.

November 23d, 1842.

This cause came this day to be heard.

C. Roselius, esq., for plaintiffs; D. Seghers and St. Paul, esqrs., for defendant.

The court delivered the following opinion:

This suit is brought to recover from defendant a fine of fifty dollars, for having, on the 9th November, 1842, officiated on the body of Mr. Louis Le Roy, in the church St. Augustin, and having thereby violated an ordinance of the city council of the Municipality No. 1, passed on the 31st October, 1842.

The defendant, in his answer, has admitted the facts alleged, and has further pleaded the unconstitutionality of said ordinance. The case was argued upon that answer, and, after a long and elaborate argument on both sides, was submitted to the consideration of the court. The facts alleged by plaintiffs having been admitted by defendant, the court has only to ascertain whether the resolution upon which this suit is founded is legal and constitutional.

It has been shown, on the trial of this cause, that the resolution passed on the 31st of October has been amended by a resolution passed on the 7th of November, 1842, repealing that part of the resolution inflicting a fine of fifty dollars against all persons carrying or exposing, or causing to be carried or exposed, corpses in any of the Catholic churches situated in the first Municipality, excepting the obituary chapel situated in Rempart street, leaving it in force only against the Catholic priests who shall officiate in any

other church. I conceive that the city council has a full authority to enact ordinances or resolutions concerning the general police of Municipality No. 1, and its salubrity. In this instance it might be questioned, however, whether the resolution of the 31st October is perfectly legal, it being intended to have its effects against the Catholics alone, leaving aside all the other religious sects. But I do not think it necessary to examine that point—I will simply confine myself in the examination of the powers granted to the corporation of the city of New Orleans, as to general laws of police. I have read with the greatest attention all the acts of the legislature relative thereto, and I have been unable to find any which authorize the city council to enact any ordinance or resolutions which may have a tendency to prevent the free exercise of any religion, when in the exercise of the same they commit no act which may be injurious in any way to the community. The part of the resolution inflicting a fine upon every person carrying or exposing corpses in any other church than the obituary chapel, was perfectly legal.

It is incumbent on the city council to regulate every police matter respecting the salubrity of the city, and the act of carrying and exposing corpses is one which must have attracted their most particular attention; but when such a resolution is repealed, how can it stand only against the priests who officiate on those corpses which are permitted to be brought in their church without any restriction from the law. I am therefore of opinion that the resolution is illegal, and not supported by any of the acts of the legislature incorporating the city of New Orleans, from which it derives its authority.

It is therefore ordered and decreed, that judgment be entered in favor of defendant against plaintiff, with costs.

Signed, GALLIEN PREVAL, *Judge.*

Notice issued and served personally on Denis Prieur, esquire, mayor of the city, on the 2d December, 1842.

December 3*d*, 1842.

On motion of Denis Prieur, esquire, mayor of the city, an appeal is granted in this case, returnable the third Monday of December, 1842.

Signed, GALLIEN PREVAL, *Judge.*

I hereby certify the above and foregoing pages to be a true copy of all the proceedings had in this case, and all the annexed documents to be the original ones filed in this case.

Signed, A. ROBERT, *Clerk.*

New Orleans, December 16*th*, 1842.

Bond of Appeal.

Know all men by these presents, that we, Denis Prieur, mayor of the city of New Orleans for Municipality No. 1, and Denis

Prieur as surety, are held and firmly bound unto Permoli, his executors, administrators and assigns, in the sum of fifty dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 3d day of December, in the year of our Lord one thousand eight hundred and forty-two.

Whereas the above bounden Municipality No. 1 this day filed a petition of appeal from a final judgment rendered against her, in the suit of Municipality No. 1 *vs.* Permoli, in the city court of the city of New Orleans, on the 2d day of December, 1842:

Now the condition of the above obligation is such, that the above bound Municipality No. 1 shall prosecute her appeal, and shall satisfy whatever judgment may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in the appeal, otherwise that the said surety shall be liable in her place.

Signed, D. PRIEUR, *Mayor.*
D. PRIEUR.

Signed, sealed, and delivered in presence of—

Let an appeal be granted in this case, returnable the 3d Monday of December, 1842.

Signed, GALLIEN PREVAL, *Judge.*

December 3d, 1842.

Citation of Appeal.

THE STATE OF LOUISIANA:

City court of New Orleans, presided by Judge G. Préval—to the Marshal of the city of New Orleans, greeting:

You are hereby commanded to notify Mr. Permoli, that Municipality No. 1 has obtained an appeal from a final judgment rendered against her by this court, which appeal is made returnable for the third Monday of December, 1842, before the appellate court.

Signed, A. ROBERT, *Clerk.*

New Orleans, December 7th, 1842.

CITY COURT OF NEW ORLEANS,
Saturday, December 24th, 1842.

Present, the honorable Robert Preaux, Junior Judge.

MUNICIPALITY No. 1,
vs.
BERNARD PERMOLI.

This cause came on this day for trial, and, after the examination of witnesses, was continued till Monday next for argument.

Documents offered in evidence by the plaintiffs.

MUNICIPALITY No. 1 OF THE CITY OF NEW ORLEANS.—Sitting of Monday, October 31st, 1842.

Resolved, that from and after the promulgation of the present ordinance, it shall be unlawful to carry to, and expose in, any of the Catholic churches of this Municipality, any corpse, under the penalty of a fine of fifty dollars, to be recovered for the use of this Municipality, against any person who may have carried into or exposed in any of the aforesaid churches any corpse, and under penalty of a similar fine of fifty dollars against any priest who may celebrate any funeral at any of the aforesaid churches; and that all the corpses shall be brought to the obituary chapel, situated in Rempart street, wherein all funeral rites shall be performed as heretofore.

Signed, PAUL BERTUS, *Recorder.*

Approved, November 3d.

Signed, D. PRIEUR, *Mayor.*

Sitting of November 7th, 1842.

Resolved, that the resolution passed on the 31st October last, concerning the exposition of corpses in the Catholic churches, be so amended as to annul in said resolution the fine imposed against all persons who should transport and expose, or cause to be transported or exposed, any corpses in said churches.

Be it further resolved, that the said fine shall be imposed on any priest who shall officiate at any funerals made in any other church than the obituary chapel.

Signed, PAUL BERTUS, *Recorder.*

Approved, November 9th.

Signed, D. PRIEUR, *Mayor.*

A true copy.

Signed, PAUL BERTUS, *Recorder.*

Séame du Vendredi, 11 *Novembre*, 1842.

Mr. Gênois a présenté les résolutions suivantes, lesquelles ont été adoptées à l'unanimité:

Résolu, que la chapelle obituaire est ouverte à la réception de tous les corps Catholiques.

Résolu, que les personnes qui désireront y exposer des corps, s'adresseront au sécrétaire de ce conseil, qui est chargé d'ordonner les préparatifs nécessaires.

Résolu, que le public est prévenu que le Révérend Abbé J. Lesne continuera à bénir les corps qui seront transportés à la chapelle obituaire, et à y dire les prières des morts.

Pour copie conforme.

Signé, A. DUBUE, *Sécrétaire.*

NOUVELLE ORLEANS, *le* 7 *Novembre*, 1842.

Le Curé de la paroisse St. Louis, à l'honorable Denis Prieur, maire de la Nouvelle Orleans.

MONSIEUR LE MAIRE: J'ai reçu la lettre que vous m'avez fait l'honneur de m'écrire le 4 de ce mois, en réponse à la mienne du même jour. Je suis loin d'attribuer les motifs dont vous parlez, ni à vous, Mr. le Maire, ni à l'assemblée de la quelle l'ordonnance émane, mais il est difficile de ne pas se persuader que ces motifs ont été ceux des rédacteurs de l'ordonnance. L'epoque de l'année où elle est portée, sa coïncidence avec notre retraite du Presbytère, (dont Messieurs les Marguilliers étaient prévenus,) l'identité d'un des membres dans l'un et l'autre conseil, tout tend à fortifier l'opinion que nous nous en sommes formés.

L'ordonnance du 26 Septembre, 1827, nous était connue, mais nous n'eussions jamais pensé que c'eût été enfreindre ses dispositions, que de célébrer le service funèbre à l'église de St. Augustin, avant de conduire le corps du défunt au cimetière, attendu que cette église est dans la même position que la chapelle obituaire, et même plus avantageusement placée sous le rapport de la salubrité publique, qui dans le tems a été le seul motif de l'ordonnance sus mentionnée du 26 Septembre, 1827.

Vous m'observerez, Monsieur le Maire, que la Chapelle n'étant pas la propriété de la municipalité, elle ne peut en disposer; elle n'appartient pas non plus au clergé, ainsi il n'a pas non plus le droit d'en disposer. C'est un obstacle à l'exécution de l'ordonnance, que ses rédacteurs n'ont pas prévû. Vous avez la bonté de m'informer que Messieurs les Marguilliers laissent cette chappelle à notre disposition pour les interremens *comme par le passé;* mais il n'est pas dit si cette disposition sera libre et absolument indépendante d'eux, comme je l'ai demandé dans ma lettre du 4 du courant.

L'expression: *Comme par le passé*, semble indiquer une intention contraire de leur part, car si nous disposions de la chapelle sur ce pied, ils pourraient en tirer la conséquence que nous consentons à leur laisser le même contrôle et les mêmes droits sur cette partie de notre ministère, qu'ils exerçaient et prélevaient avant notre retraite, ce à quoi nous ne pouvons souscrire dans notre position actuelle.

Recevez, Monsieur le Maire, l'assurance de la haute estime et du profond respect avec les quels j'ai l'honneur d'être

Votre très humble serviteur,

Signé C. MAENHAUT, *Curé.*

CITY COURT OF NEW ORLEANS, *December* 26, 1842.

Present, the Hon. Robert Preaux, junior judge.

This cause came on this day to be tried on a continuance.

Present, C. Roselius, for plaintiffs, D. Seghers and H. St. Paul, for defendant.

After hearing the argument of counsel, the court adjourned till this afternoon at 5 o'clock, P. M.

MONDAY, *December 26th*, 1842.

The court met according to adjournment.

Present, the Hon. R. Preaux, junior judge.

The argument of counsel was resumed and continued till to-morrow.

TUESDAY, *December 27th*, 1842.

Present, the Hon. Robert Preaux, junior judge.

The argument of this case was this day resumed; and the court, after hearing, took time to consider.

CITY COURT OF NEW ORLEANS,
Tuesday, 3d *January*, 1843.

Present, the Hon. Robert Preaux, junior judge.

MUNICIPALITY No. 1
vs.
BERNARD PERMOLI.

The court delivered this day the following opinion:

This is an action instituted by Municipality No. 1, of the city of New Orleans, against the defendant, B. Permoli, in order to recover from him a fine of fifty dollars for having violated the provisions of an ordinance of the council of said Municipality, passed on the 31st October, 1842, and which is as follows:

"Resolved, That, from and after the promulgation of the present ordinance, it shall be unlawful to carry to, and expose in, any of the Catholic churches of this Municipality any corpses, under the penalty of a fine of fifty dollars, to be recovered for the use of this Municipality against any person who may have carried into or exposed in any of the aforesaid churches any corpse, and under penalty of a similar fine of fifty dollars against any priest who may celebrate any funeral at any of the aforesaid churches, and that all the corpses shall be brought to the obituary chapel, situated in Rempart street, wherein all funeral rites shall be performed as heretofore."

This ordinance was, on the 7th November, 1842, amended by another ordinance, in the following words:

"Resolved, That the resolution passed on the 31st of October last, concerning the exposition of corpses in the Catholic churches, be so amended as to annul in said resolution the fine imposed against all persons who should transport and expose, or cause to be transported or exposed, any corpses in said churches.

"Be it further resolved, That said fine shall be imposed on any priest who shall officiate at any funerals made in any other church than the obituary chapel."

To the demand of the corporation the defendant has answered, admitting all the facts alleged by the plaintiff; but he avers, "that in so doing he was warranted by the Constitution of the United States, which prevents the enactment of any law prohibiting the free exercise of any religion; that the ordinance on which the complainants rely, is null and void, being contrary to the provisions of the act of incorporation of the city of New Orleans, and those of the Constitution and laws of the United States above cited."

The case was argued in the court below on the pleadings only, and judgment was given in favor of the defendant—the judge being of opinion, "that the resolution is illegal, and not supported by any of the acts of the legislature incorporating the city of New Orleans, from which it derives its authority."

The plaintiffs appealed..

Before entering into a statement of the case, as it appeared on the trial before this court, I consider it necessary to give a mere outline of the circumstances which induced the council of the first Municipality to pass the ordinances of the 31st of October and 7th November, 1842.

By an ordinance of the corporation of the city of New Orleans, approved 26th September, 1827, and entitled "An ordinance supplementary to an ordinance concerning public health," it was "Resolved, that from and after the first of November next, (1827,) it shall not be lawful to convey and expose into the Parochial church of St. Louis any dead person, under penalty of a fine of fifty dollars, to be recovered, for the use of the corporation, against any person who should have conveyed or exposed any dead person into the aforesaid church; and also under penalty of a similar fine of fifty dollars, against all priests who should minister to the celebration of any funeral in said church; and that from the first of November of the present year, (1827,) all dead persons shall be conveyed into the obituary chapel in Rempart street, where the funeral rites may be performed in the usual manner."

This ordinance continued in force during a period of fifteen years, without any opposition on the part of the Catholic clergy or population; but in the year 1842, the late lamented and venerable revered Abbé Moni, curate of the parish of St. Louis, having departed this life, some misunderstanding took place between his successor and the church-wardens. The new curate and assistant clergy abandoned the cathedral, and commenced to celebrate funeral ceremonies in other churches than the obituary chapel, this chapel being under the administration of the said wardens. The council thereupon passed the ordinances, for the violation of which the defendant is sued.

The case was presented here on the same pleadings as in the court below, but the plaintiff's counsel introduced evidence to prove several facts; this evidence was in substance as follows:

The Right Reverend *A. Blanc*, bishop of New Orleans, testified that the dogmas of the Roman Catholic religion did not require that the dead should be brought to a church, in order that the funeral ceremonies should be performed over them; that this was a matter of discipline only; that the witness, as bishop of this diocese, had authorized the clergy to leave the cathedral, and not to officiate at funeral rites at the obituary chapel, and that these ceremonies might be celebrated at the house where the dead person expired, or at any other place designated by the bishop.

The Reverend C. Maenhant, curate of the parish of St. Louis, testified, that he was the curate of said parish, and in that capacity he had given orders for no funeral service to be said at the obituary chapel; that, from the situation of the clergy with regard to the wardens, these funeral services could not, with propriety, be performed at said chapel; that he had been several times applied to, by persons who wished these ceremonies celebrated over the dead bodies of their friends or relatives at the obituary chapel, but he had replied that, under present circumstances, these ceremonies would not be performed at that place, but at the chapel of St. Augustin, or in the house where the deceased person was lying, at the choice of the relatives.

Cross examined.—This witness testified, that the St. Augustin chapel was, in his opinion, as conveniently situated for these purposes as the obituary chapel; that, in the funeral office, there is nothing calculated to disturb the public peace, nothing contrary to morals, and that the greatest decency is always observed in these mortuary rites.

The Reverend Jacques Lesne testified, that he is the priest employed as chaplain at the obituary chapel; that he *is* entitled to no remuneration, besides what he receives from the church-wardens, for attending at the chapel, to bless the bodies of the dead which are brought there; that he does not celebrate funeral obsequies with that pomp which is given to them in special cases, but he continues, with the permission of the bishop, to read the office of the dead, whenever required at the obituary chapel, as he did previous to the departure of the clergy from the cathedral; that he is not permitted to leave the chapel to accompany funerals to the cemetery.

Cross examined.—He said, there is nothing immoral or contrary to the public tranquillity in the prayers which are said at funerals.

Messrs. José Fernandez, Bernard Turpin, Anthony Fernandez, and Joseph Génois, proved that, for fifteen years past, the funeral service has been performed at the obituary chapel, only that this chapel is the best situated for this purpose, and that nothing disorderly ever occurred there.

Mr. A. Fernandez, *cross examined*, added that he had never known of the occurrence of any disturbance of the public peace, during the ceremonies at the St. Augustin chapel, but he had heard

a great deal of complaint about it; and that, being a native of New Orleans, and having almost constantly resided here, he has never seen or heard of the performance of funeral rites at any of the Protestant churches.

The honorable Paul Bertus, recorder of Municipality No. 1, proved, that having had the misfortune to lose his sister-in-law, he desired that the funeral solemnities should have been celebrated at the obituary chapel; but that the clergy had left him no choice but between the St. Augustin chapel and the mortuary house, and that he determined upon the latter place.

The following resolutions, passed by the church-wardens of the parish of St. Louis, were next introduced:

Sitting of Friday, 11th November, 1842.

"Resolved, that the obituary chapel shall be open for the reception of the remains of all deceased Catholics. Resolved, that all persons who desire to have dead bodies exposed in funeral state, at the said chapel, are requested to give notice to the secretary of the wardens, in order that he may cause the necessary preparations to be made.

"Resolved, that the public be informed that the Reverend Abbé Lesne shall continue to bless all bodies of dead persons brought to the obituary chapel, and that he will continue to say the usual funeral prayers at said chapel."

A correspondence between the mayor and the curate was also introduced, by consent of parties; but the court, considering this evidence as having no legal effect upon the case, contents itself merely with the mention of its introduction.

Henry St. Paul, esquire, (one of defendant's counsel,) testified, that at Lexington, Kentucky, he saw the body of a deceased person taken into the Methodist Episcopal church, where a funeral oration was pronounced for the occasion by the Reverend Maffit, a minister of that persuasion, and that said oration was followed by prayers.

Finally, the testimony of Mr. P. E. Crozat proved, that one of his friends having departed this life, and having been warned by Mr. Rufino Fernandez of the existence of the ordinance, he had nevertheless insisted that the body should be taken to the St. Augustin chapel for the funeral rites, holding himself responsible for the fine imposed, for his opinion was on the side of the clergy.

The evidence closed here, and the case was elaborately argued on both sides.

On the part of Municipality No. 1, the case was sustained by the counsel with a degree of reasoning, learning and eloquence, rarely to be heard; and it is the duty of the court to thank him for the candid manner in which he presented the case, and for the light of authority thrown upon it by his researches, facilitating greatly the labor of the court in the discharge of its important and delicate du-

ties. His argument has been to the court a fruitful source of valuable knowledge.

With these pleadings and evidence before it, the court is called upon to decide between the parties.

The pleadings do not specially set forth on what particular constitutions and laws the defendant relies, but from the argument the court finds it is necessary, in order to come to a satisfactory conclusion, to examine the following questions:

1st. Is the ordinance of Municipality No. 1 contrary to any of the provisions of the Constitution of the United States, or of that of the State of Louisiana?

2d. Can the court declare a law to be invalid by reason of its unnecessary, unjust, arbitrary, or odious character and effect?

3d. Had the Municipality (apart from the constitutional question) power, under its charter, to pass this ordinance?

4th. Do the fundamental rules and guarantees of civil and religious liberty contained in the ordinance of Congress of 1787, relative to the territories, still remain in force in the State of Louisiana?

5th. Does the ordinance of Municipality No. 1 infringe the religious liberty of the classes of persons in relation to whom it was passed?

Let us examine each of these questions separately.

1st. Is the ordinance of Municipality No. 1 contrary to any of the provisions of the Constitution of the United States, or of that of the State of Louisiana?

In order to decide this question, it is necessary to divide it, and examine, in the first place, if the ordinance conflicts with any article of the federal compact.

The only provision relative to religion in this great charter, is found in the third article of the amendments, as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition the Government for a redress of grievances."

It is clear, from the terms of the article itself, that this is a prohibition upon Congress, and not a restriction upon the legislation of the States. If, therefore, the inhibition is upon Congress alone, the power remains with the States or the people. Such is not the isolated opinion of the judge of this court alone, (this interpretation, he is aware, would be of little weight if based upon his single authority,) but it is the unanimous opinion of the great lawyers and judges of the Union, which is here merely repeated as a familiar principle. It is the doctrine clearly laid down by one of the fathers of American constitutional jurisprudence, Justice Story, who, in his commentaries on the Constitution, vol. 3, pages 730 and 731, uses the following clear and explicit language: "Thus the whole power over the subject of religion is left exclusively to the State govern-

ments, to be acted upon according to their own sense of justice, and the State constitutions."

Judge Story takes pains, in preceding pages, to explain that the amendment was introduced, not for the purpose of placing *imperium in imperio.* He says, "It was under a solemn consciousness of the dangers from ecclesiastical ambition, the bigotry of spiritual pride, and the intolerance of sects, thus exemplified in our domestic, as well as in foreign annals, that it was deemed advisable to exclude from the national Government all power to act upon the subject. The situation too, of the different States, equally proclaimed the policy, as well as the necessity of such an exclusion.

"In some of the States, Episcopalians constituted the predominable sect; in others, Presbyterians; in others, Congregationalists; in others, Quakers; and in others again, there was a close numerical rivalry among contending sects. It was impossible, that there should not arise perpetual strife and perpetual jealousy on the subject of ecclesiastical ascendency, if the national Government were left free to create a religious establishment. The only security was in extirpating the power."

If the above be true, how can it be maintained, with any semblance of reason, that the ordinance is contrary to the Constitution of the United States.

Now let us see what bearing the constitution of this State has upon this question. The only portion of that instrument, to which appeal may be made with the least plausibility on this subject, is the 21st section of the 6th article, which is as follows:

"Printing press shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may speak, write and print, on any subject, being responsible for the abuse of that liberty."

There is no direct mention made here of religion, but so broad a guarantee of liberty in the "*communication* of thoughts and opinions," must necessarily embrace the liberty of speech on matters of religion, and if the privilege of speaking and writing thoughts and opinions on matters of religion is fully secured, does it not necessarily follow that the opinions themselves, the conscience itself, or what is the same thing, the religion itself, is also protected in the same degree of freedom; for would it not be negatory to protect the expression of opinion, if the opinion or the religion itself could be attacked, restrained, or subverted? In the opinion of the court, the protection of what is a mere consequence or effect, necessarily embraces a protection of the *cause.* Nevertheless, when, on one hand, we must hold that the right of worshipping God as one thinks best, is one of the most precious rights of man, and one of the essential principles of a republican government, does it, on the

other hand, follow that the exercise of this right cannot be legally *regulated?* We see already, in the article itself, a wise restriction placed upon the "*abuse*" of the liberty of speaking and writing, and we must perceive also, that the subject of religion is embraced in this restriction. In my opinion, nothing can be more dangerous, in legislation, than to give a right, independent of the power of regulating its enjoyment. The priest, as well as the layman, has certainly the full advantage of all constitutional protection; but if the priest, abusing his authority, attempts to deprive the layman of his mutual enjoyment of the right, or to restrain it in an arbitrary manner, can it be reasonably pretended that the Legislature could not interfere to regulate the conduct of each party, so that the rights of both might be preserved? If the priest is hindered in his religious duties, who would pretend that the Legislature could not come to his relief against those who disturb him; but if he, in turn, is guilty of a similar act, on what principle can he claim exemption from all law?

If a conflict takes place between the spiritual and temporal authority, jeopardizing the public peace, would it not, in fact, be the duty of the Legislature to interfere and settle the difficulty by wise laws, which, while they prescribed good and wholesome rules, would infringe upon no right solemnly guarantied, but would guide and moderate, without molesting or destroying.

This mode of viewing a question of this kind is sanctioned by the best precedents. We have already seen the authority of Judge Story as to the powers reserved to the States on this subject. Our own supreme court (Martin's Reports, vol. 11, page 322) has decided, that "Freedom does not preclude the idea of subjection to law—indeed, it presupposes the existence of some legislative provisions, the observance of which insures freedom to us, by securing the like observance from others."

This opinion, delivered by the wise, learned, and venerable Judge Martin, is not the only one which establishes similar principles; but, even were it alone, this authority would be entitled to a great weight; but a large number of decisions might be invoked, derived from the supreme tribunals of States whose constitutions contain the broadest provisions in favor of religious liberty—much broader and much more explicit than the articles of our own State constitution. Among these decisions, I find the following in the 9th volume of Cranch's Report, page 49, as delivered by Judge Story. After quoting the constitution of Virginia, he says: "Yet it is difficult to perceive how it follows as a consequence, that the Legislature may not enact laws more effectually to enable all sects to accomplish the great object of religion, by giving them corporate rights for the management of their property, and the regulation of their temporal *as well as spiritual concerns.* Yet the 16th section of the bill of rights of Virginia declares: 'That religion, or the duty which we owe to our Creator, and the manner of discharging it, can

be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience, and that it is the mutual duty of all to practise christian forbearance, love, and charity towards each other.' "

In the above mentioned decision, Judge Story has clearly been guided by the great and well recognised principle, that the regulations of the free exercise of a right, so far from restraining it, is a mode of sustaining and enforcing it. With this decision, then, placed alongside of the constitution of Virginia, can it be pretended that, under the constitution of Louisiana, no law can be passed on religious matters? Certainly not. Such a doctrine finds a sanction under no system of laws.

I pass to the second question.

Can the court declare a law to be invalid by reason of its unnecessary, unjust, arbitrary, or odious character and effect?

The constitution of our State has divided the sovereignty into three branches of power, the legislative, the executive, and the judiciary.

The extent of each is defined, and it is required that each should be independent of the others, and one branch is, in the most formal manner, prohibited from exercising any power properly belonging to either of the others. To the legislature belongs the power to pass laws, and to judge of their expediency and propriety. To the executive, the duty of watching to their observance; and on the judiciary devolves the task to expound the legislative acts, and define their application in a reasonable manner, according to the spirit and letter combined. When the judiciary finds the law to be constitutional, this branch of the government has no right to inquire into the expediency or justice of the law; for, in so doing, the judiciary would cease to be the organs of the law, to become its makers, and would interfere with the legislative department.

This point is one of those which are the best settled in American jurisprudence. See Marshall on the Constitution, page 32; Wheeler's Criminal Cases, vol. 3, page 248; Cowin's Reports, vol. 7, page 607.

Third question.—Had the municipality (apart from the constitutional question) power, under its charter, to pass this ordinance?

The constitution of Louisiana, sec. 23 of the 6th article, says: "The citizens of the town of New Orleans shall have the right of appointing the several public officers necessary for the administration and the police of said city, pursuant to the mode of election which shall be prescribed by the Legislature: Provided, that the mayor and recorder be ineligible to a seat in the General Assembly."

It appears, from this provision, that the intention of the framers of the State constitution was, to guarantee to the city of New Orleans, the advantages of a municipal administration and police. True it is, that a right of election only is guarantied, but that right

is established for certain purposes, to wit: 1st, administration; 2d, police; which necessarily include, 1st, the right of passing by-laws or ordinances; 2d, all police powers—for, to will the end is to will the means. Already the legislative council, previous to the adoption of the constitution, had granted to the city the right of passing all ordinances necessary to these objects. By the 6th section of an act, passed on the 17th February, 1806, it is enacted, "The said council shall have the power to make and pass all by-laws and ordinances for the better government of the affairs of said corporation, for regulating the police, and preserving the peace and good order of the said city."

The Legislature having never repealed this law, it remains, though enacted by the territorial legislature, in full force, by virtue of the 11th section, 4th article of our constitution. The powers defined by this act, furnished matter for a large code of municipal by-laws, yet they have been considerably enlarged by subsequent statutes. We find, by the first section of an act, approved 14th March, 1816: "That the city council shall have power and authority to make and pass such by-laws and ordinances as they shall deem necessary to maintain the cleanness and salubrity of said city." And in another part of the section we see, "and to make any other regulations which may contribute to the better administration of the affairs of the said corporation, as well as for the maintainance of the police, tranquility, and safety of the said city." See city laws 1836, pages 309 and 311.

When these acts were passed, the city had not yet been divided into municipalities. In the act of division, approved 8th March, 1836, we find in the 4th section the following words: "Each of said municipalities of the city shall possess separate corporate rights, and are hereby declared to be distinct corporations, and shall posess generally all such rights, powers, and capacities, as are usually incident to municipal corporations." And at the end of the section we see: "And in general shall possess and exercise within their respective limits, all such powers, rights, and privileges, as are now possessed and exercised by the corporation of New Orleans."

In the second section of this act, we find the same provisions repeated in various forms. The 8th, 10th, and 11th sections give to each municipality the power of electing its officers, to define their duties, and to enforce the observance of their ordinances within their respective limits. By the 10th section it is enacted, that the ordinances of the old corporation shall remain in force until repealed by the legislature, or by the city councils of each of said municipalities, respectively.

It is impossible, after a serious examination of the act dividing the city, not to come to the conclusion that the several municipalities have the same rights and powers, within their respective limits, as belonged to the old corporation, saving a few slight and specific

modifications and restrictions, in relation to the powers of the general council, of which I will speak in another part of this opinion.

This being established, let us see under what class of powers the ordinance under discussion is to be ranked, and let us see, also, what is meant by the word *police*. This word is defined, Tomlin's Law Dictionary, vol. 3, *verbo* police: "The term police and economy is applied by Blackstone to signify the due regulation and domestic order of the kingdom; but it is more generally applied to the internal regulations of large cities and towns, particularly of the metropolis, whereby the individuals of the State, generally speaking, or of any town or city within itself, like members of a well governed family, are bound to conform their general behaviour to the rules of propriety, good neighborhood, and good manners, and to be decent, industrious, and inoffensive in their respective situations." See also Blackstone, *book* 4, *page* 118, *No.* 163.

The power to regulate matters of police, necessarily includes every thing which relates to public health, a free passage through the streets, their cleanliness, and the prevention of every act which may tend to disturb the peace, or affect, injuriously, the moral feelings of the community, or any part thereof. And if this power is to be so understood, it cannot be doubted, that the municipalities have a right to regulate the manner and place of funeral processions and ceremonies, for this is not only important to the salubrity of the city, but also may have, particularly in times of epidemics, a direct and dangerous effect upon the mental condition of the inhabitants. Those who have not yet been affected by the epidemic, as well as those who are sick, may be struck with fatal terrors in consequence of such spectacles. The rituals of the different sects, and the fact that no other temples but those of a certain sect exist within the limits of a corporation, may certainly be taken into consideration in making by-laws on these subjects. This is not making partial and arbitrary laws, but it is avoiding to make useless ones. When an ordinance prohibits the celebration of funeral ceremonies in such a church, the fine to secure the observance of the law may be imposed, not only on those who directly infringe the prohibition, but also on those who aid and assist. It may be imposed on the owner of the church, who, by permitting the corpse to be brought into it, furnishes the means of the violation of the law. It may be imposed on the bearers of the body, who, by bringing it into the church, accomplish the very act sought to be prevented. It may be imposed upon the priest who officiates, or on those who assist him, for, if they did not lend their ministry to the act, there would be no occasion or incentive to bring the body into the church. This cannot be construed into a restriction of the freedom of religious worship, but it is a legal mode of protecting the rights of the whole community.

See Wheeler's Criminal Cases, vol. 3, pages 248 and 249. Wendell's Reports, vol. 10, page 101. Cowin's Reports, vol. 2, page 316. Martin's Reports, vol. 11, page 322. 20 Pickering's Reports,

page 206. 2 Dallas, page 213. 3 Sergeant and Rawle, page 48. City Hall Reports, page 4. Ordinances of Boston, pages 55, 53, 76. Of Nashville, page 60. Revised Statutes of Massachusetts, page 741.

All the authorities here referred to, are derived from States, the constitutions of which, give the broadest protection to religious liberty; but in these States, as in all civilized countries, it is well understood that freedom does not mean *abuse*.

But it is contended that this police ordinance is of a general nature, and that the passing of ordinances of a general nature belongs alone to the general council of the city. The 20th section of the act dividing the city, (page 517, city laws, 1836,) after having enumerated the other powers of the general council, says, in the 6th paragraph, that said council shall have power "to enact all police regulations of a general nature, the operation of which shall be uniform in all parts of the city." Does this mean that, if the general council does not act, the councils of each municipality shall not have the right to pass ordinances on these matters to operate within their respective precincts? Where is the restriction against such a course? It certainly is not to be found in the 20th section.

This point is similar to that presented by the provision in the Constitution of the United States conferring upon Congress the right to pass a general bankrupt law. Notwithstanding this grant of power, the States, where Congress had not legislated on the subject, passed many bankrupt and insolvent laws, which have been declared perfectly constitutional by a well settled jurisprudence. When, therefore, the general council shall pass ordinances on this subject, then will the regulations of the several municipalities cease to be in force; but, until then, they have power to act.

This ordinance cannot be said, within the meaning of the 20th section above quoted, to be a general ordinance; for it concerns only a certain part or quarter of the city, as in cases where certain establishments (hospitals or the like) are confined to certain sections of the city.

4th. Do the fundamental rules and guarantees of civil and religious liberty contained in the ordinance of Congress of 1787, relative to the territories, still remain in force in the State of Louisiana?

As to this ordinance, I do not think it to be in force. It was a constitution that Congress had established for the territories; but this has been superseded by the constitution of the State. On the 16th February, 1811, Congress passed a law authorizing the people of Louisiana to form a constitution of their own. In that law, certain conditions were imposed; and, among the rest, one requiring a provision in the new constitution in favor of religious liberty. This law also required the new constitution to be submitted to Congress for approval, which was accordingly done, and the new constitution was sanctioned on the 8th of April, 1812; and Louisiana was thereby admitted into the Union on an equal footing with original States.

This constitution they sanctioned became the supreme law of the State; and all acts of Congress regulating the *government* of the territories of the United States ceased to exist within the limits of Louisiana—a sovereign State. If the adoption of a new State constitution, by a convention, would at once extinguish the present one, for the greater reason, the erection of Louisiana into an independent State, under a constitution adopted by her own citizens and sanctioned by Congress, must necessarily set aside the charter established for its territorial government by Congress. To accede to a contrary doctrine would be to admit that the power of Congress might be perpetuated, notwithstanding this solemn act, contrary to the rights of the States as defined and reserved by the federal compact.

It is true that our State constitution declares that the laws in force in the territory, at the time of the adoption of the constitution, shall continue to exist *until repealed by the State Legislature;* but this last clause shows clearly that the acts of the territorial legislature alone were intended, and not the acts of Congress; for a State Legislature cannot repeal the acts of Congress. If the convention had intended that the acts of Congress should form a part of our constitution, that intention would certainly have been expressed; but, on the contrary, we find nothing in the constitution which indicates such an intention.

5th. Does the ordinance of Municipality No. 1 infringe upon the religious liberty of the class of persons in relation to whom it was passed?

It would be sufficient to repeat the testimony given by the Rev. Bishop Bland to give a negative answer to this question.

The regulation made by this ordinance does not touch upon matter of dogma or a point of religious faith, but merely controls a practice of mere discipline; and if in matters of religion, as we have already said, its exercise may be controlled so that the rights of others may not be disturbed, so that use may not become abuse, so that freedom may not degenerate into license, so that the public peace, health, and happiness may be preserved, without depriving any man of his mode of worship and the rights of conscience—for the greater reason, then, does it follow that such an ordinance is lawful when passed apparently with a view to the salubrity of the city, and when, at the same time, it only regulates the enjoyment of a matter of mere discipline, in no manner essential to the religion of the individual.

It is advanced, on this point, that it was very difficult to trace a line of distinction between dogma and discipline. I think, on the contrary, that nothing is more easy. Dogmas are composed of articles of faith, which are invariable; while discipline, on the other hand, is composed of rules which may change according to times and circumstances, the wants of the church and of society. If this definition, which appears to me correct, is admitted, how can it be

said that a law, which touches only upon a point of discipline, can restrain the religious faith of any sect?

But if the testimony of the bishop were not sufficient, as it is on this subject, we would find, on examining the authority of the fathers of the church, that a law regulating the pomp of funeral obsequies, with *an apparent view* of the salubrity of the municipality, far from being condemned by their authority, would be highly approved. "Why does the ambition of vain show sustain itself in the midst of mourning and tears? Why those suptuous habiliments in which the dead are enveloped? The flesh of the rich—will it not rot away unless clothed in the same trappings which vainly distinguished them through life?"

"The pomp of funerals, said St. Augustin, ostentatious processions, superb mausoleums, may be to the living some source of consolation—they are of no help to the dead; and what boots it to them, said St. Crysostome, all this vain distinction—to their memory, rather than to their dust, we should do honor."

But it is said that the priest who blesses the corpse, alone is punished, while the person who takes the corpse into the church, is not molested—the priest is hindered from his ministry in certain parts of the city—why is he alone controlled. The evidence of Mr. Maenhant offers a solution to this question, which, after all, is merely a point of expediency and legislative discretion, as to what persons are to be punished. It is because the priest is the principal cause of the violation of the law. He says to the citizen, (who has lost a relation or a friend, and who wishes to comply with the customs of society, rather than to the requirements of faith, in having the body of the deceased blessed in a church,) you shall not go elsewhere than to the church of St. Augustin, though these ceremonies be forbidden at that place. If the corporation imposed the fine on the relatives of the dead, the coffers of the corporation might be filled without attaining the apparent object of the ordinance. To attain the priest, was the only mode of giving a substantial effect to the regulation; and this appears, beyond a doubt, from the evidence of Mr. Crozat. Certainly the priest must be free in the exercise of his ministry, but his sacred office must not serve as a cloak to cover violation of the law. This office does not give him a rank higher than another individual in the eye of the law, and if any other citizen can be attained, the priest can be attained, also, by a fine of this nature. Thus the legislator may say to him, follow as you please your mode of worship, but I will not suffer that you abuse that right, disregarding the feelings, rights, and interests of others.

These considerations have solved the several questions which the court was called upon to decide. Now, as to the terms of the ordinance itself, the court after having minutely examined them, is of opinion that the penalty is incurred only by the officiating priest; that is to say, in the religious acceptation of the word, by him who

celebrates the office of the dead; and, therefore, the assistant priest, chorist, and singers, are not included. But if, during the same ceremony, the *celebrant* or officiating priest is changed once or several times, each of these would be liable to the fine.

I must confess that my first impressions on this subject were favorable to the defence—but, on mature reflection, my conclusions differ from those of the judge *a quo*, and although I entertain for his character, as a judge, the greatest esteem, and hold his judgment and experience in great respect, I cannot however in this instance concur in his opinion.

It is therefore ordered, adjudged, and decreed, that the judgment of the court below be reversed and annulled, and the court proceeding to render herein such judgment as ought to have been in the first instance, now orders, adjudges, and decrees, that judgment be rendered in favor of Municipality No. 1, against B. Permoli, for the sum of fifty dollars, amount of the fine demanded, with costs of the court below; the costs of appeal, in consequence of the introduction of new evidence, to be paid by the plaintiff and appellant.

(Signed) ROBERT PREAUX, *Junior Judge.*

January 6, 1843.

Motion.

City Court of New Orleans, *4th January*, 1843.

Present, the Hon. Robert Preaux, junior judge.

Municipality No. 1
vs.
B. Permoli.

On motion of Henry St. Paul, esquire, of counsel for defendant, it is ordered by the court, that plaintiff in this case show cause, on Tuesday next, 10th instant, at 9 o'clock, A. M., why the judgment rendered in this case should not be set aside and annulled, and a new trial awarded on the following grounds in substance.

1st. That the judgment is contrary to law and evidence.

2d. That the judgment contains gross errors, both as to law and facts, in the points relating to the ordinance of 1787.

3d. That the judgment contains much extravagance and useless matters, which the defendant cannot suffer to pass off as matter of record.

4th. That the judgment assigns grounds of defence which were never relied upon by defendant, thereby showing that the court took no notice of the arguments, and decided upon grounds of its own, which this defendant cannot suffer to pass uncorrected.

Marshal's return.

Received, January 4, 1843, and on the same day served a true copy of the within motion on Mr. C. Roselius, attorney for Municipality No. 1, who accepted service thereof.

Returned January 5, 1843.

(Signed) F. TAINTURUR, *D'y M'l.*

January 4th, 1843.

On the suggestion of Dominique Seghers, esquire, the defendant's counsel in this case, that he has not recused the judge, only by a motive of personal friendship, notwithstanding the instructions of his client, the court, *ex officio*, allows to the defendant to plead by himself or by his counsel, the recusation of the judge on specified grounds, to be filed in court in three days from this date; the said recusation to be pleaded on the same day fixed for the hearing of the motion made in order to obtain a new trial in this case, to wit, Tuesday next, the 10th instant; and it is further ordered that a copy of this order be served on the plaintiff.

New Orleans, January 4th, 1843.

(Signed) ROBERT PREAUX,
Junior Judge.

A true copy.

(Signed) P. R. COLSTON,
Deputy Clerk.

Marshal's Return.

Received, January 5th, 1843, and on the same day served a true copy of the within order on Mr. C. Roselius, attorney for Municipality No. 1, who accepted service thereof.

Returned, January 5th, 1843.

(Signed) F. TAINTURUR, *D'y Ml.*

January 5th, 1843.

On motion of Henry St. Paul, of counsel for defendant, and on his alleging to the court that, by suing out a writ of error to the Supreme Court of the United States, defendant has chosen to consider the judgment of the court as final, (saving the aforesaid right of availing himself of a stay of execution, under the supersedeas of the United States Supreme Court,) it is ordered by the court that the motion for a new trial, herein filed on the 4th instant, be set aside, as well as all other proceedings either prayed for or granted ex officio by the court; and it is further ordered, that the writ of error prayed for be issued as soon as the judgment shall be signed.

Bond.

No. 4,700.

MUNICIPALITY No. 1, OF NEW ORLEANS,
vs.
B. PERMOLI. } In error.

Know all men by these presents, that we, Bernard Permoli, duly represented by Dominique Seghers, esq., his counsel and attorney, as principal obligator, and Dominique Seghers, esq., in his own personal name, as security, are held and firmly bound unto the above Municipality No. 1, of New Orleans, in the sum of two hundred dollars, to be paid to the said Municipality No. 1, of New Or-

leans, to which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Signed by us and dated this eleventh day of January, eighteen hundred and forty-three.

Whereas, the above named Bernard Permoli hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the honorable the city court of New Orleans; now, the condition of this obligation is such, that if the above named Bernard Permoli shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

(Signed) B. PERMOLI,
By D. SEGHERS, *his att'y.* [L.S.]
(Signed) D. SEGHERS. [L.S.]

Signed and delivered in presence of
P. R. COLSTON, *D'y Clerk.*

I approve the above bond. New Orleans, January eleventh, 1843.
(Signed) ROBERT PREAUX,
Junior Judge.

UNITED STATES OF AMERICA,
State of Louisiana, City court of New Orleans:

I, A. Dreux, clerk of the city court of New Orleans, do hereby certify, that the foregoing twenty-six pages contain a true copy of the proceedings had before the honorable Gallien Préval, associate judge of the city court of New Orleans, in a certain suit wherein Municipality No. 1, of the city of New Orleans, was plaintiff, and Bernard Permoli was defendant; and also of the proceedings had in this court, on the appeal taken by said Municipality No. 1, of the city of New Orleans, which appeal is now on the files thereof, under No. 4,700.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, [L. S.] this 10th day of February, 1843, and in the sixty-seventh year of the independence of the United States of America.

A. DREUX,
Clerk of the city court of New Orleans.

I, Robert Preaux, junior presiding judge of the city court of New Orleans, do certify, that the foregoing transcript of the record of the case therein mentioned contains all the evidence adduced by the parties, on the trial of the cause in this court, and in that of first instance; and I do further certify, that A. Dreux is clerk of the said city court of New Orleans, and that the signature "A.

1102.

Dreux, clerk of the city court of New Orleans," to the foregoing certificate, is in the proper handwriting of him the said clerk; to his official acts, as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on this fourteenth day of February, in the year of our Lord one [L. S.] thousand eight hundred and forty-three, and in the 67th year of the independence of the United States of America.

ROBERT PREAUX,
Junior Presiding Judge of the city court of New Orleans.

I, Robert Preaux, junior presiding judge of the city court of New Orleans, State of Louisiana, moreover certify that this court is the highest court of law and equity, under the authority of the State of Louisiana, in which a decision could be had in the present suit.

In testimony whereof, I have hereunto set my hand and affixed my private seal, at New Orleans, this 15th day of [L. S.] February, A. D. 1843, and of the independence of the United States the 67th.

ROBERT PREAUX,
Junior Presiding Judge of the city court of New Orleans.

CITY COURT:

MUNICIPALITY No. 1, vs. B. PERMOLI. } No. 4,700.

Copy of the writ of error lodged in the clerk's office of the city court of the city of New Orleans, in pursuance [of] the statute in such cases made and provided, this eleventh day of January, 1843.

D. SEGHERS,
Attorney of Plaintiff in error.

Filed 11th January, 1843.

P. R. COLSSON, *D'y Clerk.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the city court of the city of New Orleans, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said city court, before you, or some of you, between Municipality No. 1, as plaintiffs, and B. Permoli, as defendant, a manifest error hath happened, to the great damage of the said B. Permoli, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this seventh of [L. S.] January, in the year of our Lord one thousand eight hundred and forty-three.

DUNCAN N. HENNEN,
Clerk of the United States Circuit Court and Eastern district of Louisiana.

A true copy.
Test: DUNCAN N. HENNEN, *Clk.*

CITY COURT OF NEW ORLEANS:

MUNICIPALITY No. 1 vs. B. PERMOLI. } No.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the ninth circuit and eastern district of Louisiana, in pursuance [of] the statute in such cases made and provided this day of

_____,
Attorney of plaintiff in error.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the city court of the city of New Orleans, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said city court, before you, or some of you, between Municipality No. 1, of the city of New Orleans, as plaintiffs, and B. Permoli, as defendant, a manifest error hath happened, to the great damage of the said B. Permoli, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of

January next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 7th day of January, in the year of our Lord one thousand eight hundred and forty-three.

DUNCAN N. HENNEN,
Clerk of the United States Circuit Court and Eastern District of Louisiana.

I, the undersigned, deputy clerk of the city court of New Orleans, do hereby certify that a true copy of the foregoing writ of error has been this day deposited in the office of the clerk of the aforesaid court.

In testimony whereof, I hereunto set my hand and affix the [SEAL.] seal of said court. New Orleans, this 11th day of January, 1843.

P. R. COLSSON, *D'y Clerk.*

Citation in error.

The United States of America to Municipality No. 1 of the city of New Orleans, and State of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 2d Monday of January next, pursuant to a writ of error filed in the clerk's office of the city court of the city of New Orleans, wherein said Municipality No. 1 was original plaintiff, and Bernard Permoli original defendant, and wherein said Bernard Permoli is now plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 14th day of January, in the year of our Lord one thousand eight hundred and forty-three.

ROBERT PREAUX,
Junior Presiding Judge of the City Court of New Orleans.

Marshal's return.

Received, January 14, 1843, and on the same day served copies of the within citation in error on Municipality No. 1, by having the same at the city hall, both with his honor Denis Prieur, the mayor of New Orleans, and with his honor Paul Bertus, the recorder of